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Letter dated 21 May 2004 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see enclosure I) and Prosecutor (see enclosure II) of the International Criminal Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I would be grateful if you could transmit these assessments to the members of the Security Council.

(*Signed*) Theodor **Meron**

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Enclosure I

Assessments and report of Judge Theodor Meron, President of the International Criminal Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004)

21 May 2004

1. This report is submitted pursuant to Security Council resolution 1534, adopted 26 March 2004 ("resolution 1534"), which, at paragraph 6, requested the International Criminal Tribunal for the former Yugoslavia ("ICTY" or "Tribunal") "to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the Completion Strategy of the Tribunal, explaining what measures have been taken to implement the Completion Strategy and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions."

I. Introduction

2. On 25 May 1993, the Security Council adopted its resolution 827, which created the Tribunal and assigned it the task of "prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia" since 1991. With very few modern precedents, the Tribunal began to develop a system within which those most responsible for acts of genocide, crimes against humanity, and other serious violations of international humanitarian law could be brought to account for their deeds. The first accused was transferred to the Tribunal on 24 April 1995. In the nine years since that date, the Tribunal has completed trials in 17 cases involving 35 accused. A further 17 accused have pleaded guilty, three of whom entered pleas mid-trial. Eight accused are currently being tried in six cases before the Trial Chambers. The Tribunal has therefore completed or is holding first instance proceedings involving, including guilty pleas, 59 accused in 23 trials and 15 separate guilty plea proceedings. It is expected that at least two pending trials will end during the course of this year and lead to the beginning of trials in new cases, which will increase the above numbers to at least 61 accused in a total of 25 trials and 15 guilty plea proceedings by the end of 2004.

3. The Tribunal has always been mindful that its role is not that of a permanent court, but of an *ad hoc* entity intended to complete a task that is finite, albeit large and complex. In 2002, the President of the Tribunal, Judge Claude Jorda, submitted the Tribunal's annual report, which outlined the Tribunal's strategy for fulfilling its task and winding up its operation. In its resolution 1503, adopted 28 August 2003 ("resolution 1503"), the Security Council endorsed the ICTY's completion strategy, which envisioned completion of investigations by the end of 2004, completion of all trial work at first instance by the end of 2008, and completion of all work in 2010, by concentrating on the most senior leaders suspected of being most responsible

for crimes within the jurisdiction of the Tribunal ("Completion Strategy"). The Security Council reaffirmed the schedule of the Completion Strategy in resolution 1534.

4. Since 9 October 2003, the date of the last report of the President of the Tribunal to the Security Council, the Tribunal has continued its effort to improve the efficiency of its own proceedings and to promote the establishment of institutions in the former Yugoslavia that can ensure that serious violations of international humanitarian law do not go unpunished. The Tribunal continues to support the efforts of the Office of the High Representative to establish a War Crimes Chamber within the State Court of Bosnia and Herzegovina which would be able to receive and try accused of lower and intermediate rank who were indicted by the Tribunal and is also assisting in creating responsible cadres of lawyers and prosecutors in other areas of the former Yugoslavia by its involvement in training and educative programs through the Outreach Offices at the Tribunal and in the region.

5. In the wake of resolution 1534, the Judges of the Tribunal met in an extraordinary plenary session to amend the Rules of Procedure and Evidence in order to comply with paragraph 5 of the resolution, which called upon the Tribunal in the process of review and confirmation of indictments to ensure that indictees be among "the most senior leaders suspected of being most responsible for crimes within the jurisdiction" of the Tribunal. Rule 28(A), as amended, requires the Bureau to satisfy itself that the subjects of each new indictment meet this criterion, on its face, prior to confirmation.

6. The Trial Chambers continue to operate at full capacity, adjudicating six cases simultaneously and preparing for the speedy commencement of new cases to reduce to an absolute minimum the time between the conclusion of one trial and the start of another. The Tribunal has also taken steps to shorten the length of appeal judgements, which will improve the efficiency of the Appeals Chamber.

7. The arrival at The Hague of eight additional freshly-indicted accused creates additional stresses in meeting the target for the completion of trials in 2008. The transfer of certain accused to domestic jurisdictions for trial, especially to the Sarajevo War Crimes Chamber, is critical to the successful achievement of the Completion Strategy, as the Security Council noted in resolution 1503. Also essential is that the Tribunal continue to have adequate personnel to perform its work, a requirement seriously threatened by the current hiring freeze that not only limits the Tribunal's ability to take on new staff to meet its increasing workload, but also forbids hiring even to replace essential personnel who leave the Tribunal. The Tribunal must also be in a position to improve its retention of qualified staff and to rectify the severe staff shortage at the Appeals Unit of the International Criminal Tribunal for Rwanda (ICTR) at The Hague to address the increase in appeals work originating from the ICTR.

8. Other factors which would affect the ability of the Tribunal to reach the goal of completion of trials by 2008 and of all work by 2010 are improved cooperation by national governments, speedy surrender of principal fugitives, and addressing the risk of lost time due to the election of new Judges in 2005. In addition, the more accused plead guilty, thereby

obviating the need for a full trial at the Tribunal, the more likely it is that the Tribunal will be able to complete its work on time.

II. Progress Made Toward Implementation of the Completion Strategy

A. Progress of Proceedings at First Instance

9. As of 5 May 2004, approximately nine years since the first accused was transferred to the Tribunal on 24 April 1995, the Tribunal has tried 35 accused to final judgement in a total of 17 trials. Seventeen accused pleaded guilty during that period,[1] and all but one of these accused have been sentenced; the remaining one, who pleaded guilty in January 2004, is expected to be sentenced before the end of May 2004. (See Annex 1 hereto.) A further eight accused[2] are currently being tried in six separate cases before the Trial Chambers: Slobodan Milošević; Momcilo Krajišnik; Vidoje Blagojević and Dragan Jokić; Radoslav Brđanin; Pavle Strugar; and Enver Hadžihasanović and Amir Kubura. (See Annex 2 hereto.) There are currently 33 accused awaiting trial. (See Annex 3 hereto.)

10. Accordingly, as of 5 May 2004, the Tribunal has either completed or is holding trials or, in the case of guilty pleas, sentencing proceedings involving 59 defendants. At least two of the pending trials, *Brđanin* and *Strugar*, are expected to conclude during the course of 2004, which will permit those Trial Chambers to begin two new trials before the end of this year. It is therefore estimated that, by 31 December 2004, the Tribunal will have completed or be holding first instance proceedings involving at least 61 accused in a total of 25 trials and 15 separate guilty plea proceedings.

11. Since the President of the Tribunal last addressed the Security Council in October 2003, trials have concluded and judgements issued in two cases, involving a total of four accused. The judgement in the case of Blagoje Simić, Miroslav Tadić, and Simo Zarić, regarding allegations of crimes in Bosanski Šamac, was rendered on 17 October 2003, and the judgement in the case of Stanislav Galić regarding the siege of Sarajevo was rendered on 5 December 2003. During the same period, eight sentencing judgements have been issued in the cases of Darko Mrđa, Miroslav Deronjić, Ranko Cešić, Miodrag Jokić, Dragan Nikolić, Momir Nikolić, Dragan Obrenović and Predrag Banović.

12. Since October 2003, ten accused have come into the Tribunal's custody. Nine of these accused were the subject of new indictments that were submitted by the Prosecutor and reviewed and confirmed by a Judge of the Tribunal after October 2003. The tenth, Vladimir Kovačević, was a previously-indicted fugitive who was arrested and transferred to the Tribunal. One of the new indictees, Milan Babić, surrendered to the Tribunal voluntarily, entered a plea of guilty shortly after his initial appearance, and is now awaiting sentencing. It is expected that the nine remaining newly-arrived accused will be tried in a total of three cases: one involving

[1] One of these accused, Goran Jelisić, pleaded guilty on some counts but was tried on others and is therefore included both as an accused tried to final judgement and as an accused who pleaded guilty.

[2] One of the currently pending cases originally involved a ninth accused, Momir Talić, who died in 2003.

six accused (Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić), one involving two accused (Ivan Čermak and Mladen Markač), and one involving one accused (Vladimir Kovačević). All of these cases have begun the pre-trial phase. Including these new arrivals, the Tribunal is currently conducting pre-trial proceedings in 17 cases involving 33 accused in detention or on provisional release. (See Annex 3 hereto.)

13. Despite the arrival of ten indictees at The Hague, the overall number of fugitives from the Tribunal has increased since October 2003 as a result of fresh indictments. On 25 September 2003, the Prosecutor submitted an indictment of four high-level Serbian officials, Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić. This indictment was confirmed on 2 October 2003 and unsealed on 20 October 2003. These accused have not been arrested or transferred to the Tribunal and apparently remain at large in Serbia and Montenegro. These accused bring the fugitive count to 20 as of 5 May 2004. Other individuals have been indicted by the Tribunal in proceedings that remain under seal. For obvious reasons, the Tribunal cannot report on such cases until such time as the indictments are unsealed.

B. Progress of Proceedings on Appeal

14. The ICTY Appeals Chamber was first seised of an appellate matter in 1995. Since that time, it has decided 13 appeals from judgements rendered by ICTY Trial Chambers, including two appeal judgements in the first half of 2004 in the cases of Mitar Vasiljević and Radislav Krstić. It has also decided 147 interlocutory appeals from ICTY Trial Chambers, 11 requests for review of its own decisions or judgements, and five contempt proceedings. As of 5 May 2004, 11 appeals from judgement and two interlocutory appeals from ICTY Trial Chambers were pending before the Appeals Chamber.

15. The members of the ICTY Appeals Chamber also serve as members of the Appeals Chamber of the ICTR pursuant to article 13(4) of the Statute of the ICTR. The ICTR Appeals Chamber first heard appeals from ICTR Trial Chambers in 1997. Between that year and 5 May 2004, the ICTR Appeals Chamber has decided seven appeals from judgements, 80 interlocutory appeals, six requests for review, and one contempt matter. As of 5 May 2004, seven appeals from judgement and 11 interlocutory appeals from ICTR Trial Chambers were pending before the ICTR Appeals Chamber.

16. In total, therefore, the Judges of the two Appeals Chambers have decided 20 appeals from judgements, 227 interlocutory appeals, 17 requests for review, and six contempt proceedings as of 5 May 2004. (See Annex 4 hereto.) On that date, 18 appeals from Judgement and 13 interlocutory appeals were pending before the two Appeals Chambers. (See Annex 5 hereto.)

17. Six hearings in appeals from judgement have taken place since October 2003. The Appeals Chamber held hearings in the cases of Mitar Vasiljević and Radislav Krstić in November 2003 and issued its Judgements in those cases on 25 February 2004 and 19 April

2004 respectively. The appeal from judgement in the case of Tihomir Blaškić was heard in The Hague on 16 and 17 December 2003, following a hearing regarding admission of additional evidence on appeal during the prior week. The appeals from judgement in the case of Miroslav Kvočka, Mlado Radić, Zoran Žigić and Dragoljub Prcać were heard in The Hague from 23 to 26 March 2004. The appeal from judgement in the case of Eliézer Niyitegeka was heard in Arusha on 21 and 22 April 2004. Most recently, the hearing in the appeals from judgement in the case of Dario Kordić and Mario Čerkez took place in The Hague from 17 to 19 May 2004. The Appeals Chamber's Judgements in these four pending cases are currently being drafted.

18. Three further appeal hearings are planned for this year. The hearing in the appeals from judgement in the case of Elizaphan and Gérard Ntakirutimana was originally scheduled for December 2003, but was twice rescheduled on motions of the parties and is currently planned for July 2004 in Arusha. In the latter part of 2004, the Appeals Chamber plans to have hearings in The Hague on the appeals from judgement in the case of Mladen Naletilić and Vinko Martinović, and in Arusha on the appeals from judgement in the case of Laurent Semanza.

19. It is expected that judgements in the seven outstanding appeals that have been heard or will be heard this year will be issued within months of the respective hearings.

III. Measures Taken to Implement the Completion Strategy

A. Referral of Cases Involving Lower- and Intermediate-Rank Accused to Competent National Jurisdictions

20. One element critical to achievement of the Completion Strategy will be the ability of the Tribunal to refer cases to competent national jurisdictions for trial.

21. Transfer of investigative materials or of preparatory documents regarding individuals who have not yet been indicted by the Tribunal rests entirely within the authority of the Prosecutor. It is anticipated that the Prosecutor will conduct a review of the Tribunal's caseload with a view to determining which cases may in her view be possible candidates for referral to domestic jurisdictions, as indicated in paragraph 4 of resolution 1534.

22. Referral of cases after an indictment has been confirmed may be ordered only by a Trial Chamber pursuant to Rule 11*bis* of the Tribunal's Rules of Procedure and Evidence. Under Rule 11*bis*, a Trial Chamber may refer a confirmed indictment for prosecution, either *proprio motu* or upon motion by the Prosecutor, to the authorities of a State in which the crime was committed or in which the accused was arrested. In determining whether to refer an indictment, the Trial Chamber must consider the gravity of the crimes charged and the level of responsibility of the accused. Although not explicitly mentioned in the Rule, the ability of the accused to receive a fair trial in accordance with due process and international human rights norms is a significant additional factor. Trial Chambers are unlikely to refer cases to jurisdictions in which the accused might not be accorded a fair trial. It will also be important for the Tribunal to maintain some minimum form of monitoring of the cases referred under

Rule 11*bis*, in light of the power of a Trial Chamber to revoke the referral order at the request of the Prosecutor and to make a formal request for deferral of the case back to the Tribunal.

23. Certain accused currently detained at the Tribunal or on provisional release may be possible candidates for referral to domestic jurisdictions. However, an important prerequisite for Rule 11*bis* referrals, in addition to the conclusion that the accused is not among the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal, is the presence of appropriate domestic facilities in the relevant States that are prepared to try a case on the basis of a confirmed indictment referred by the Tribunal. The Tribunal is of course committed to supporting the achievement of credible war crimes trials that meet international norms of due process in all States of the former Yugoslavia.

24. With regard to Bosnia and Herzegovina, as the Security Council recognized in resolution 1503, an "essential prerequisite to achieving the objectives of the ICTY Completion Strategy is the expeditious establishment under the auspices of the High Representative and the early functioning of a special chamber within the State Court of Bosnia and Herzegovina (the "War Crimes Chamber") and the subsequent referral by the ICTY of cases of lower- or intermediate-rank accused to the Chamber." The Tribunal and the Office of the High Representative are taking significant steps to establish the War Crimes Chamber. The expectation is that the War Crimes Chamber will be operational by early 2005, assuming that detention facilities are available then which meet minimum human rights standards. However, the reality of this facility being available may depend on the Office of the High Representative obtaining the additional support that it considers necessary. Although the donor community gave meaningful support to the War Crimes Chamber at the donors' conference held in the Tribunal on 30 October 2003, additional support is still required, as the Security Council recognized in calling for further financial support in paragraph 10 of resolution 1534.

25. Regarding the possibility of referring cases to the courts of Croatia, observations made by the Mission to Croatia of the Organization for Security and Co-operation in Europe in their reports on domestic war crimes trials indicate that ethnic bias continues to taint the integrity of judicial proceedings in Croatia.[3] A similar assessment was made by the European Commission in its Opinion on the Application of Croatia for Membership in the European Union, issued on 20 April 2004. Although the Commission noted that the Croatian authorities "appear determined to improve conditions for prosecution of war criminals in domestic courts," it also concluded that "a single standard of criminal responsibility is not yet applied equally to all those who face war crime charges before Croatian courts."[4] Referral of cases to Croatia will only become a possibility after assurances are received regarding the elimination of ethnic bias.

26. Despite these reports, however, the Croatian authorities have pledged to apply the necessary efforts to improve this situation, and the Tribunal is ready to provide necessary

[3] See, *e. g.*, Organization for Security and Co-operation in Europe Mission to Croatia, Background Report: Domestic War Crimes Trials 2002, February 2004, pp. 1, 3-4.

[4] European Commission, Opinion on the Application of Croatia for Membership in the European Union, COM(2004) 257 final, 20 April 2004, p. 31.

assistance. The Tribunal is engaged in a number of initiatives designed to share expertise and information with the Croatian national authorities in order to help make their judicial system suitable for eventual referral of cases from the ICTY. For example, the Tribunal is involved in an extensive program of training seminars for Croatian judges and prosecutors who are likely to take part in the trial of war crimes cases. This program, organized on the initiative of the Minister of Justice of Croatia, will consist of three seminars conducted by the Tribunal's officials, to be held in the late spring and summer of 2004 and repeated in the autumn. The seminars will focus on the jurisprudence of the Tribunal and on international humanitarian law, with the aim of strengthening the familiarity of Croatian judges and prosecutors with these subjects and to improve their ability to try serious violations of international humanitarian law.

27. Another question is whether the Tribunal could consider referring cases to the courts of Serbia and Montenegro. As is detailed in paragraph 74 below, there has been a notable failure to cooperate with the Tribunal on the part of the Government of Serbia and Montenegro in recent months. In addition, the Mission to Serbia and Montenegro of the Organization for Security and Co-operation in Europe, after monitoring several war crimes proceedings in Serbia and Montenegro throughout 2003, concluded that "the national judiciary lacks full capacity to conduct war crimes trials in accordance with universally adopted standards."[5] The Council of Europe also recently noted several concerns regarding the independence and effectiveness of the judiciary in Serbia and Montenegro.[6]

28. However, the Tribunal is taking part in efforts to hasten the day when courts in Serbia and Montenegro will be able to conduct trials that meet the standards of international human rights and due process. The Tribunal recently hosted a week-long visit, organized by the United Nations Development Programme, by seven judges of the newly-established Department for War Crimes at the Belgrade District Court, commonly known as the Special Court for War Crimes. The aim of the visit was to facilitate the transfer of knowledge and experience from the practice of the Tribunal, to establish channels of communication between the Special Court and the Tribunal, and to make use of the legal and practical resources of the Tribunal in addressing potential problems in processing war crimes at the Special Court.

29. The overarching problem, for the time being, is that the courts of the States of the former Yugoslavia are not yet in a position to try ICTY indictees in proceedings in which the Tribunal can be sure that international human rights and fair trial standards are fully satisfied. As national institutions emerge in the former Yugoslavia that are able to try persons accused of serious violations of international humanitarian law fairly, that can afford the accused the full protection of due process of law, and that will provide adequate protection to witnesses, the Tribunal will take all necessary steps to begin referring appropriate cases to national jurisdictions.

[5] Organization for Security and Co-operation in Europe Mission to Serbia and Montenegro, War Crimes Before Domestic Courts, October 2003, p. 4.

[6] Council of Europe, Serbia and Montenegro: Compliance with Obligations and Commitments and Implementation of the Post-Accession Co-operation Programme, SG/Inf(2004)14, 30 April 2004, paras. 28-34.

B. Compliance with Requirement of Seniority in Resolution 1534

30. In paragraph 5 of resolution 1534, the Security Council called on the Tribunal, "in reviewing and confirming any new indictments, to ensure that any such indictments concentrate on the most senior leaders suspected of being most responsible for crimes within the jurisdiction" of the Tribunal. The direction to concentrate on the most senior leaders, which originated with recommendations made by the Tribunal, has been in existence since at least 2000, when the Security Council took note of "the position expressed by the International Tribunals that civilian, military and paramilitary leaders should be tried before them in preference to minor actors."[7]

31. As the President of the Tribunal indicated in his address to the Security Council on 9 October 2003, the Statute and the Security Council's resolutions at that time did not authorize the Judges of the Tribunal to assess whether subjects of indictments met the Council's standard of being "the most senior leaders suspected of being most responsible for crimes within the jurisdiction" of the Tribunal. The President indicated that, under the system in place at the time, "the matter is clearly between the Council and the Prosecutor."[8]

32. Paragraph 5 of resolution 1534, however, made clear that the Security Council wished the criterion of seniority to be incorporated into the "reviewing and confirming [of] any new indictments," a judicial function assigned exclusively by the ICTY Statute to the Judges of the Tribunal.[9] The Judges of the Tribunal accordingly held a special plenary session to provide legal authority and a mechanism within the Rules of Procedure and Evidence to comply with this directive of the Security Council. On 6 April 2004, the Judges of the Tribunal amended Rule 28(A) of the Tribunal's Rules of Procedure and Evidence to read as follows:

> "On receipt of an indictment for review from the Prosecutor, the Registrar shall consult with the President. The President shall refer the matter to the Bureau which shall determine whether the indictment, prima facie, concentrates on one or more of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal. If the Bureau determines that the indictment meets this standard, the President shall designate one of the permanent Trial Chamber judges for the review under Rule 47. If the Bureau determines that the indictment does not meet this standard, the President shall return the indictment to the Registrar to communicate this finding to the Prosecutor."

33. The amendment implements the directive of paragraph 5 of resolution 1534 by requiring the Bureau, a body comprised of persons elected by the Judges, namely the President and Vice President of the Tribunal and the Presiding Judges of the three Trial Chambers, to satisfy itself that, in light of the information provided by the Prosecutor, the indictment concentrates prima

[7] S/Res/1329 (2000).
[8] S/PV.4838, p. 6.
[9] Statute of the International Tribunal, art. 19(1).

facie on one or more of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal. If the seniority criterion is satisfied, the normal review process commences under Rule 47. If the subjects of the indictment do not meet the seniority criterion, the indictment is returned to the Prosecutor. Rule 28(A) does not preclude the Prosecutor from resubmitting an indictment with additional information regarding the seniority of the person or persons subject to the indictment. In the view of the Judges, conferring this role on the Bureau was the most appropriate mechanism to ensure uniformity and speed in this new review process.

34. The Prosecutor has repeatedly assured both the Council and the President of the Tribunal that, in conformity with the Completion Strategy, all new indictments submitted for confirmation will satisfy the criterion of seniority. Although the Security Council has now opted to give the Judges a limited role in ensuring that the seniority criterion is met, the amendment to Rule 28(A) seeks to implement the Council's directive in a manner that fully respects the authority of the Prosecutor in framing indictments. The Rule 28(A) procedure is likely to result in minimal delay in the confirming process. Indeed, the Bureau has already determined under Rule 28(A) that recent indictments have satisfied the seniority criterion.

C. Trial Chambers Operating at Full Capacity

35. The Tribunal's three Trial Chambers continue to operate at full capacity, hearing six cases simultaneously. Currently four trials are being held in the cases of *Krajišnik*, *Strugar*, *Hadžihasanović and Kubura* and *Blagojević and Jokić*. The *Brđanin* case concluded hearings in April 2004 and proceeded to judgement writing. The Prosecution concluded its case in the trial of Slobodan Milošević in February 2004, and the Defence case is scheduled to begin in June.

36. The Tribunal does not have sufficient Judges, staff or physical facilities to conduct more than six trials at one time. However, cases in the pre-trial stages are being prepared diligently in order to avoid unnecessary delays between the end of one trial and the beginning of another and to ensure the more expeditious conduct of the trials themselves. It is therefore expected that the new trials will begin shortly after the judgements are rendered in *Brđanin* and *Strugar* during the course of this year. It is also expected that another trial will begin at the conclusion of the case of *Blagojević and Jokić* in early 2005.

D. Efforts to Make Interlocutory Appeals More Effective

37. In recent years, the Tribunal has sought to make consideration of interlocutory appeals more effective. Interlocutory appeals serve an important purpose in permitting the resolution of critical issues by the Appeals Chamber before the end of trial. However, such appeals should be the exception, not the rule, as excessive use of the procedure can interrupt the flow of a trial and create a substantial drain on the Appeals Chamber's resources. Since 23 April 2002, Rules 72 and 73 of the Tribunal's Rules of Procedure and Evidence have limited interlocutory appeals (except appeals of motions challenging jurisdiction) by requiring a Trial

Chamber's certification that an appeal involves "an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings." The same text was added to Rules 72 and 73 of the ICTR's Rules of Procedure and Evidence on 27 May 2003.

38. The certification rule appears to have had a salutary effect on the number of interlocutory appeals coming from ICTY cases. The Appeals Chamber decided 24 interlocutory appeals in 2001, 35 in 2002, and 28 in 2003. In the first four months of 2004, seven interlocutory appeals were decided or remained pending. Although the rate of interlocutory appeal is not predictable, a simple extrapolation suggests that, at least in terms of raw numbers, ICTY interlocutory appeals are decreasing in quantity.

39. With regard to the ICTR, there was no provision for general interlocutory appeals at all prior to 27 May 2003. Interlocutory appeals could only be taken on a handful of enumerated issues, such as preliminary objections relating to jurisdiction under Rule 72. The certification provisions of Rules 72 and 73 of the ICTR Rules of Procedure and Evidence, modeled on the ICTY provisions, were adopted with a view to enabling the ICTR Trial Chambers to obtain an Appeals Chamber ruling on matters that would significantly affect the conduct of the proceedings or the outcome of the trial and on which an immediate Appeals Chamber ruling would materially advance the proceedings. The inclusion of the certification process has had a positive effect in enabling early decision of matters that would otherwise have produced complications or delay during the trial or on the appeal from judgement. The number of interlocutory appeals from ICTR Trial Chambers accordingly increased following adoption of the certification rule. It is expected that the ICTR Trial Chambers will limit their certification of appeals to issues that will indeed materially advance the proceedings, such that the resources expended in deciding interlocutory appeals will be compensated by a shorter trial or appeal from judgement. For the ICTR, the Appeals Chamber decided seven interlocutory appeals in 2001, nine in 2002, and 16 in 2003. In the first four months of 2004, 18 interlocutory appeals from ICTR Trial Chambers were decided or remained pending.

E. Efforts to Shorten Appeal Judgements

40. Recently, particularly in the Appeals Chamber, the Tribunal has taken deliberate steps to shorten its judgements. In the Tribunal's early history, very few issues that may be considered routine in domestic criminal procedure had been resolved as a matter of international criminal procedure. Many substantive issues of international criminal law that are now fundamental to the Tribunal's jurisprudence were also confronted for the first time. The Appeals Chamber is now in a position to invoke the jurisprudence it has developed, on matters of both procedure and substance, reducing the need for elaborate discussion and permitting appeals judgements to focus on the central issues in each case. Consequently, the Appeals Chamber's recent judgements have been considerably shorter than prior appeal judgements – the majority decision in *Krstić* was 88 pages long, while the majority decision in *Vasiljević* was 61 pages

long. In addition to making these decisions more accessible, shorter judgements require fewer resources in terms of drafting, translation, proofreading and printing.

41. Of course, international criminal trials remain notoriously complex, involving factual scenarios that implicate the political, military, cultural, and demographic history of large regions and sometimes entire nations. They must take account of the testimony of numerous witnesses and thousands of pages of documentary evidence. The legal issues considered are often of first impression, even now, and require the canvassing of the law of national jurisdictions, international legal instruments, and academic writings. Lengthy analyses are frequently unavoidable. However, the Judges of the Tribunal are making concerted efforts to issue judgements that are no longer than required to convey their reasoning.

F. Working Group on Scheduling of Cases

42. Last year, the current President of the Tribunal formed a working group and tasked it with improving the efficiency with which trials are scheduled. This group reports regularly to the President regarding the progress of trials and the schedule of upcoming cases. The work of this group has been invaluable in the Tribunal's ability to forecast the resources and measures that will be needed in achieving the Completion Strategy. It has also helped to ensure that new cases are fully ready for trial whenever a presently pending case is concluded.

IV. Continued Implementation of the Completion Strategy

43. The Tribunal continues to search for additional measures to improve its ability to meet the goals of the Completion Strategy. In order to identify factors bearing on the continued implementation of the Completion Strategy, a prognosis of the Tribunal's ability to meet the Completion Strategy under current conditions is necessary.

A. Updated Prognosis Regarding the Completion Strategy

1. Recapitulation of October 2003 Estimate

44. In October 2003, the President reported to the Security Council the findings of the Working Group on Scheduling of Cases. The conclusion at the time was that the Tribunal would be able to complete the trials of all individuals in the custody of the Tribunal as of that date, including those on provisional release, within the 2008 deadline. From the projections of the Working Group, it was also concluded that it might be possible to complete the cases of two of the three fugitives the Council has identified as being of the highest priority, Radovan Karadžić and Ratko Mladić, within the 2008 deadline, provided they were tried together and brought into custody in 2005. It was also estimated that the Tribunal would require at least an additional year beyond the end of 2008 to try all of the indictees who were still at large at the time (not including those under sealed indictments).

45. These predictions could not take account of certain factors outside the control of the Tribunal, such as when fugitives are turned over to the Tribunal and substantial delays in trials

due to illness of the accused, nor could it estimate how many cases might not require a major trial at the Tribunal due to a guilty plea (in such cases only sentencing hearings and sentencing judgements are required) or a referral to a domestic jurisdiction under Rule 11*bis*.

46. The President also reported to the Security Council that, should the Prosecutor produce new indictments beyond those already unsealed as of the last report to the Security Council, "it will not be possible to accommodate any of these new indictments within the timeframe indicated by the Council."[10] At that time, the Prosecutor reported that she was pursuing 13 "top-priority investigations" involving "approximately 30 individual suspects, all at the highest levels of responsibility."[11]

2. Current Estimate

47. Since the President's last report to the Security Council, four new indictments have been unsealed. One indictment, concerning Milan Babić, has resulted in a guilty plea and is not expected to have a meaningful impact on the completion of trial work by 2008, although the possibility of an appeal from the sentence might raise implications for the 2010 deadline for completion of all work. A second indictment involves four high-level Serbian officials who are still at large.

48. The third and fourth recent indictments have resulted in the arrival of eight new accused at The Hague. One indictment, unsealed on 5 April 2004, involves six defendants, Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić, and Berislav Pušić. The other indictment, involving Ivan Čermak and Mladen Markač, was unsealed on 8 March 2004. These new indictments will lead to two lengthy trials of eight senior officials. It is also possible that the fugitive Ante Gotovina could be tried together with Čermak and Markač, provided he is transferred to The Hague before 2006.

49. These new indictments require revision of the estimate presented to the Council in October 2003. The October 2003 estimate was that the Tribunal would be able to complete the trials of all accused currently in custody, including those on provisional release, as well as the trials of Karadžić and Mladić before the close of 2008. At present, the Tribunal estimates that it could still complete the trials of those accused currently in custody or on provisional release, as well as the trial of Gotovina (provided he is transferred to The Hague before 2006 and tried together with Čermak and Markač) before the close of 2008.

50. These predictions themselves rest on certain important assumptions. First, they presume that trials pending in November 2005, notably the *Krajišnik* case, may continue uninterrupted even though the mandate of the Tribunal's permanent Judges expires during that month. Second, they do not take into account delays related to the health of the accused or counsel or other obstacles to the orderly conduct of trial.

[10] S/PV.4838, p. 6.
[11] S/PV.4838, p. 10.

51. If the Tribunal's trial docket increases, either because new indictments result in surrenders or transferral of accused to the Tribunal or because already-indicted fugitives are arrested and transferred, predictions regarding the completion of work at first instance will necessarily change. Of course, it is difficult to estimate how many accused might plead guilty, thus reducing trial time to that required for sentencing hearings. However, the best prediction at this time is that, if new indictees or current fugitives arrive at The Hague and require new and separate trials, it will become increasingly unlikely that all accused within the custody of the Tribunal will be tried by the end of 2008. For instance, if Karadžić and Mladić are transferred to The Hague in 2005 and can be tried together, a trial in that case – or in other cases that it would displace in the Tribunal calendar – would likely require that trial work continue at least through the end of 2009.

52. Any further growth in the trial docket would therefore make achievement of the 2008 deadline entirely dependent on the ability to dispose of some pending cases other than by a full trial at the Tribunal. The most effective routes would be guilty pleas by persons currently awaiting trial and referral of cases to domestic jurisdictions under Rule 11*bis*. Guilty pleas or Rule 11*bis* referrals would free up staff and court facilities enabling the conduct of trials in cases that would otherwise require trial work to continue past 2008. Disposing of some cases currently on the Trial Chamber docket in such a manner might enable the trial of additional accused, such as Karadžić and Mladić, within the timeframe of the Completion Strategy, again assuming they are transferred to The Hague in a timely manner.

B. Factors Bearing on Implementation of the Completion Strategy

53. Three categories of factors bear on the Tribunal's continued implementation of the Completion Strategy in the future. First, the Tribunal must have adequate personnel in order to meet its steadily increasing workload. The general hiring freeze imposed on the Tribunal presents a clear and present danger to the accomplishment of the daily work of the Tribunal and, more particularly, on the ability of the Tribunal to meet the goals of the Completion Strategy. Other necessary measures include improving retention of qualified staff and ensuring adequate staffing of the Appeals Chamber in light of increase appeal work from the ICTR.

54. Second, the Tribunal must be able to focus its resources on trying the most senior accused suspected of being most responsible for crimes within the Tribunal's jurisdiction within the timeframe of the Completion Strategy. This requires the development of domestic institutions in the States of the former Yugoslavia capable of receiving eligible cases referred under Rule 11*bis*. The schedule would also be positively affected in the event that additional accused plead guilty before trial. Improved cooperation by Member States and appropriate measures to avoid interruptions due to the expiry of the judicial mandate in November 2005 will further assist the Tribunal's ability to fulfill the goals of the Completion Strategy.

55. Third, steps will need to be taken in preparation for the winding up of the Tribunal to ensure that the requirements of the Statute and international law can be met after the Tribunal's work is complete, particularly with regard to requests for pardon, commutation, and review.

1. Adequate Personnel

(a) Recruitment Freeze

56. In May 2004, a general and complete freeze on external hiring for all vacant posts in both the professional and general service categories was imposed on the ICTY and the ICTR. The freeze affects not only vacancies for additional staff needed to address the Tribunal's growing workload, but also vacancies created by current staff who leave the Tribunal.

57. This extraordinary measure was instituted in response to a serious shortfall in payments by Member States of their assessments for the Tribunals, which the Secretary-General called an "alarming trend" that would "clearly threaten the future work of the Tribunals" if it continues.[12] The ICTY fully endorses the Secretary-General's statement in his report of 5 May 2004 that the financial situation facing the Tribunals is "frankly unacceptable"[13] and that the "continuing level of non-payment by Member States for the Tribunals is putting their future in serious doubt."[14]

58. Unless exceptions are made for essential staff, the hiring freeze will severely handicap the Tribunal not only in its future work, but also in its ability to carry out its currently pending cases. For instance, the Tribunal has a relatively small number of Legal Officers and Associate Legal Officers (the latter by definition recruited externally) who function as highly-qualified legal staff in Chambers. It is not unusual for these officers to leave the Tribunal after a short period of time to pursue other opportunities, particularly in light of the Tribunal's difficulties in retaining staff as discussed in paragraphs 62 and 63 below. Several such posts are currently vacant or expected to become vacant in the near future. The hiring freeze forbids the Chambers of the Tribunal from filling any of these posts with qualified external candidates. Without adequate assistance from legal officers, the time required for the Judges of the Tribunal to hear and decide cases will increase dramatically.

59. The Secretary-General is, of course, correct that the failure of Member States to pay their assessments for the Tribunal in a full and timely fashion "would clearly threaten the future work of the Tribunals."[15] The current freeze, however, also threatens the current work of the Tribunals. If the hiring freeze continues in effect without exceptions for essential Chambers staff, it is unlikely that the Tribunal will be able to complete its work within the Completion Strategy schedule.

60. The Secretary-General's report ominously states that "further steps will be required" beyond the hiring freeze unless Member States make "significant new payments for the Tribunals in the very near future."[16] The Tribunal has not been informed of the nature of any

[12] A/58/531/Add.1, para. 8.
[13] A/58/531/Add.1, para. 20.
[14] A/58/531/Add.1, para. 28.
[15] A/58/531/Add.1, para. 8.
[16] A/58/531/Add.1, para. 20.

contemplated further measures. It should be clear that depriving the Tribunal of the resources needed to perform its daily work not only imperils the Completion Strategy, but also the integrity of ongoing trials and proceedings.

61. The Tribunal therefore urges the Council to address this issue, which threatens the current and future work of the Tribunal, and to take whatever steps it considers appropriate to assist in alleviating the situation.

(b) Retention of Qualified Staff

62. The Tribunal is experiencing a significant problem with retention of staff in its sunset years. The *sui generis* nature of the Tribunal's task in light of the Completion Strategy requires that work be performed with maximum speed and skill until the very end of the mandate. It is highly difficult to motivate and retain the staff necessary to accomplish this goal in light of concerns regarding future employment as the Tribunal winds up its affairs.

63. The Tribunal has attempted to address the retention problem by submitting proposals to give recognition to its dedicated and talented staff within the context of redeploying or reclassifying posts to allow for promotion possibilities and within the context of eligibility to apply for other United Nations positions after the Tribunal has closed down. These proposals need the support of the appropriate United Nations organs and of Member States. The Tribunal, particularly the Chambers, is losing highly qualified staff members to other institutions that can offer more senior positions and longer-term career opportunities. Unless this problem is addressed, loss of staff may begin to have negative repercussions for the work of the Tribunal and for adherence to completion dates.

(c) Staffing of the ICTR Appeals Chamber

64. The ability to meet the 2010 deadline in the Completion Strategy is bound up with the 2008 deadline for the completion of trial work. Virtually all persons convicted by a Trial Chamber after a full trial appeal their convictions and assert errors of both fact and law.

65. One significant change in the work of the Appeals Chamber has been the major increase in appeals from the ICTR. This is largely due to two factors: the expansion of the ICTR Trial Chambers through the use of *ad litem* judges, producing more judgements on the merits, and the use of the certification process to produce more interlocutory appeals. As is noted in paragraph 39 above, 18 interlocutory appeals were pending or decided in the first four months of 2004 alone, compared to seven interlocutory appeals decided by the ICTR Appeals Chamber in all of 2001, nine in 2002, and 16 in 2003. Similarly, seven appeals from final judgement are currently pending, which is as many as the ICTR Appeals Chamber has decided throughout its existence.

66. The staffing of the ICTR Appeals Chamber has not kept pace with the surge in appeals from the ICTR. Between 2002 and early 2004, the number of Legal Officers and Associate

Legal Officers assigned to the ICTR Appeals Chamber remained the same despite the dramatic increase in the number of appeals.

67. An understaffed Appeals Chamber has implications not only for the 2010 deadline, but also for the 2008 deadline. A lack of resources at the appellate level delays the decision of interlocutory appeals, leading in turn to delays in proceedings at the trial level. Furthermore, the Appeals Chamber is the one area where a shortage of staff in one Tribunal creates problems in the other. A shortfall in staff at the ICTR Appeals Chamber requires the current staff to divert their attention from ICTY appeals in an effort to tame the backlog in the ICTR Appeals Chamber.

68. It is essential that the ICTR Registry be in a position to assign the necessary Legal Officer and Associate Legal Officer posts to the ICTR Appeals Chamber. This includes not only relief from the general hiring freeze, but also the flexibility to add or redeploy posts to the ICTR Appeals Chamber.

2. Factors Bearing on the Tribunal's Ability to Try the Most Senior Accused Subject to Its Jurisdiction

69. Four categories of factors bear on the Tribunal's ability to focus its efforts on trying the most senior leaders suspected of being most responsible for crimes within the Tribunal's jurisdiction within the Completion Strategy deadlines.

(a) Rule 11*bis* Referrals

70. First, it is imperative that Rule 11*bis* referrals become a reality, such that accused currently in custody or on provisional release who are not the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal may be referred to national jurisdictions for trial. Because many accused were either arrested in Bosnia and Herzegovina or allegedly committed crimes there, this possibility depends largely on the efforts of the Office of the High Representative to establish an operational War Crimes Chamber in Sarajevo. Representatives of the Tribunal's Chambers, Registry, and Office of the Prosecutor meet regularly with representatives of the High Representative to assist in the establishment of the War Crimes Chamber. It is estimated that the Chamber will be operational in early 2005 and that Rule 11*bis* referrals might begin around that time, or sooner if detention facilities in conformity with international standards are in place.

71. Although Rule 11*bis* referrals would assist the Tribunal in the completion by 2008 of the trials of senior-level accused presently in custody, and might even make it possible to try Karadžić and Mladić within that timeframe as well, trials would still go beyond that date if other fugitives or new indictees are brought to The Hague. Apart from Karadžić, Mladić and Gotovina, 17 indictees remain at large. While some of these accused might be candidates for Rule 11*bis* referral, several – including the four most recently indicted high-level Serbian officials – apparently fall into the category of senior officials whose trial is expected to take place at the Tribunal. Moreover, given that the Prosecutor has indicated that the subjects of

any remaining indictments will satisfy the seniority criterion, it is unlikely that any new indictees would be appropriate for Rule 11*bis* referral. Senior accused are also likely to trigger lengthier trial proceedings than lower-ranked accused who are candidates for referral to national jurisdictions, in part due to the complexity of allegations regarding command responsibility.

(b) Guilty Pleas

72. The Tribunal's trial docket would shrink if accused currently in custody plead guilty. Encouraging guilty pleas is of course not appropriate for the Judges of the Tribunal. Rather, the Tribunal's Rules of Procedure and Evidence and its jurisprudence guarantee the accused the right to demand that the charges against him or her be proven beyond reasonable doubt. While the Prosecutor has been successful in reaching plea agreements with several accused, the discretion to seek out and conclude such agreements rests entirely with the Prosecutor and cannot be imposed by a Trial Chamber. Moreover, the Trial Chamber is not bound by the recommended sentence in such agreements and retains its discretion to impose a punishment it considers proportionate in the circumstances.

73. The two measures that have the greatest chance of assisting the Tribunal in achieving the Completion Strategy, guilty pleas and Rule 11*bis* referrals, concern the number of trials held before the Tribunal, not the duration of trials. It is not likely that the Tribunal will be able to reduce the length of trials in any respect significant enough to assist in the fulfillment of the Completion Strategy. The Statute and the Security Council's resolutions make clear that the Tribunal should now concentrate its resources on high-level accused, whose trials tend to involve multiple defendants, entire military campaigns or governmental institutions, several locations, hundreds of witnesses, and thousands of pages of documents. While particular measures may be taken within the context of each individual trial to accelerate proceedings, there are unlikely to be any generalized internal measures that can speed up international criminal trials on a wholesale basis without encroaching on the fairness of proceedings. The Completion Strategy must never result in compromising principles of international due process, fairness and the rights of both accused and victims.

(c) Cooperation by Member States

74. Third, it must be stressed that the Tribunal cannot function without the necessary cooperation from Member States. Recalcitrance on behalf of national authorities has a palpable effect on the efficiency of trials. The authorities of Serbia and Montenegro appear, at the time of writing this report, to have taken little or no action with regard to Nebojša Pavković, Vladimir Lazarević, Vlastimir Đorđević, and Sreten Lukić, who have been fugitives from the Tribunal for over six months. As stated in the letter of 4 May 2004 from the President of the Tribunal to the President of the Security Council,[17] cooperation by Serbia and Montenegro with respect to the arrest of fugitives, access to evidence, and the granting of waivers of immunity to enable witnesses to provide statements or testify before the Tribunal is virtually

[17] S/2004/353.

nonexistent. On the other hand, cooperation by the Government of Croatia with the Tribunal has improved greatly, although the Tribunal continues to be concerned about the failure to arrest Ante Gotovina and transfer him to The Hague.

75. As indicated above, the completion of the trials of Karadžić, Mladić and Gotovina within the timeframe of the Completion Strategy depends on several factors, not least of which is their prompt arrival in The Hague. These events cannot be brought about by the Tribunal, but rather require the cooperation of authorities in the region of the former Yugoslavia and the support of the international community. It must be stressed that the Tribunal will not fulfill its historic role unless and until these particular fugitives are brought to justice. There must be no impunity for these accused; they cannot be allowed to "wait out" the charges against them.

(d) Expiry of Term of Permanent Judges in November 2005

76. Fourth, certain cases, including the trial of Krajišnik, are expected to progress through the end of the current mandate of permanent Judges, which expires on 16 November 2005. In preparing current predictions regarding the schedule for completion of trials, it has been assumed that there will be no significant delays in the progress of trials due to the process of election of Judges or the results of the election. However, in a letter dated 13 January 2004 to the President of the Security Council,[18] as well as in additional documents submitted to the Informal Working Group of the Security Council on the ICTY and ICTR, the President of the Tribunal warned that trials in cases continuing beyond the end of the term of current permanent Judges might be slowed or disrupted due to uncertainties surrounding the election of Judges, with serious potential consequences for the Completion Strategy, should judicial elections be held according to the usual procedures. If permanent Judges adjudicating in trials pending in November 2005 are not elected to a new term of office, and if their terms are not extended to allow completion of those trials (which in some cases might far exceed the length of extensions of mandate granted in the past), there is a substantial risk that those trials will have to start again with new Judges.

77. There are various ways to address this situation, as indicated in the letter of 13 January 2004. So far, however, no action has been taken, either through the measures mentioned in the letter of 13 January or otherwise, with regard to the expiry of the Judges' term of office in November 2005. If no action on this matter has been taken by the end of June 2004, it will be presumed that elections will be held according to usual procedures.

3. Measures in Preparation for the Winding Up of the Tribunal

78. During the informal consultations of the President of the Tribunal with the Informal Working Group of the Security Council on the ICTY and ICTR, the issue of pardon and commutation of sentences after 2010 was raised. Under article 28 of the Statute, a State enforcing the sentence of a person convicted by the Tribunal shall notify the Tribunal in the event that the person is eligible for pardon or commutation of sentence under the State's

[18] S/2004/53.

applicable law. Consideration of the matter is assigned to "[t]he President of the [Tribunal] in consultation with the judges."[19] Under the applicable Tribunal Practice Direction, the President consults the members of the Bureau and the Judges of the Chamber that originally sentenced the convicted person.[20] The Completion Strategy envisions an end to all ICTY work in 2010, but convicted persons will continue to become eligible for pardon or commutation of sentence after the Tribunal ceases to exist. An alternative mechanism for the processing of pardon and commutation applications after 2010 will be necessary. An amendment to the Statute prior to the end of 2010 will be inevitable in this situation.

79. Moreover, the review mechanism of article 26 of the Statute will also have to be examined. That provision allows a convicted person, or the Prosecutor, to submit an application for review of a judgment where a new fact has been discovered that was not known at the time of proceedings before the Trial Chamber or the Appeals Chamber and which could have been a decisive factor in reaching the decision. Requests for review could well arise after 2010 and the Council must ensure that there is some mechanism by which such requests may be properly considered.

V. Conclusion

80. The Security Council's decision to create an international tribunal for the prosecution of serious violations of international humanitarian law has yielded a mature institution that is now making daily contributions to the fight against impunity. Despite the vast scope and unprecedented nature of its task, the Tribunal has achieved the Security Council's goal of ensuring that persons responsible for war crimes, genocide, and crimes against humanity must answer for them in public trials that meet the highest standards of international due process. The jurisprudence that the Tribunal has developed, in matters of international criminal law and international criminal procedure, has already served as an important resource for the ICTR and other war crimes tribunals established under the aegis of the United Nations, and will no doubt provide guidance to the International Criminal Court.

81. The ICTY Trial Chambers are now operating at maximum capacity, conducting six cases simultaneously and preparing additional cases for trials scheduled to begin as soon as the pending cases are concluded. The Appeals Chamber, though facing a heavier workload than before, particularly from the ICTR, continues to decide appeals from judgement and interlocutory appeals at a significant rate.

82. The Tribunal has continued its efforts to lay the groundwork for a smooth and timely end to its operations. Internal efforts to improve the efficiency of court work, especially in the Appeals Chamber, continue to pay dividends. The Tribunal's continued work with the Office of the High Representative towards the establishment of a special chamber within the State Court of Bosnia and Herzegovina is expected to bear fruit early in 2005, at which time the

[19] Statute of the International Tribunal, art. 28.

[20] ICTY Practice Direction No. IT/146, 7 April 1999, para. 5.

Tribunal could begin to refer eligible cases of lower- or intermediate-rank accused to the Chamber.

83. The unsealing of new indictments in March and April 2004 created additional uncertainties for the Completion Strategy. The Tribunal is still in a position to try all accused currently in detention or on provisional release by the end of 2008, possibly including one high-priority fugitive, Ante Gotovina, provided he arrives in The Hague before 2006. However, because the new indictments will likely result in the addition of two new trials involving eight new defendants, it is unlikely that the Tribunal will be able to try any other fugitives or new indictees, including Radovan Karadžić and Ratko Mladić, within the Completion Strategy deadlines unless some cases can be resolved by means other than a full trial at the Tribunal, such as by referral to a domestic jurisdiction or by a guilty plea. Other measures, including enhanced cooperation of Member States in transferring the high-profile fugitives and eliminating delays due to the election of new Judges in 2005, would assist the Tribunal in its ability to meet the goals set out in the Completion Strategy. Such measures will become even more important if new indictments or the capture of fugitives result in the arrival of additional accused at The Hague.

84. The Tribunal is committed to do all within its power to meet the goals of the Completion Strategy. In order to fulfill its mandate, however, the Tribunal must be able to try the most senior fugitives accused of serious violations of international humanitarian law, in particular Karadžić, Mladić and Gotovina. As long as those individuals remain at large, the Tribunal will not have completed its historic mission. In order to carry out this task of providing justice to victims and putting an end to impunity, the Tribunal needs the strong political and financial support of the United Nations and all Member States, as well as the necessary resources to do its job. The specific factors over which the Tribunal has no control, as discussed in paragraphs 53 through 79, must be addressed in order to optimize the Tribunal's ability to meet the goals of the Completion Strategy.

85. Measures such as a general freeze of hiring personnel are bound to play havoc with the work of the Tribunal and hence with the Completion Strategy. It is imperative that the Tribunal be in a position to take steps to replace departing essential staff, particularly in the Chambers. By the same token, the problem of retention of qualified staff must be addressed in short order, as must the staffing level in the ICTR Appeals Chamber, which has not kept pace with the appeal docket from the ICTR.

86. The Security Council's instruction that the Tribunal focus on trying the most senior persons responsible for crimes within its jurisdiction means that new indictees will be unlikely candidates for referral to national jurisdictions under Rule 11*bis*. It is therefore imperative that cases already on the Tribunal's docket that can be completed without a full trial be so completed as soon as possible. The success of the Sarajevo War Crimes Chamber is critical in this regard. Furthermore, the transfer of the high-priority fugitives, Karadžić, Mladić and Gotovina, should be ensured as soon as possible, and cooperation by the States of the former

Yugoslavia must be forthcoming in all other relevant situations, including the provision of evidence and the return of individuals on provisional release.

87. As the ICTY progresses through the most active and productive period of its history, it continues to send a powerful message of responsibility and accountability to the former Yugoslavia and throughout the international community. The efforts of the States of the former Yugoslavia to bring peace, order and the rule of law to their societies are gaining traction, and the day will no doubt come when any accused subject to the jurisdiction of the Tribunal could receive a fair trial in accordance with due process of law in the domestic courts of the region. The Tribunal is doing its utmost to ensure that such institutions come into being and is prepared to begin referring appropriate cases to domestic jurisdictions as soon as they are prepared to receive them. At the same time, the Tribunal will continue to exercise the jurisdiction conferred upon it to ensure that serious violations of international humanitarian law are tried publicly, fairly, efficiently, and credibly.

Annex 1

Persons Convicted or Acquitted after Trial and Guilty Pleas (Total: 51)*				
1. Persons Convicted or Acquitted after Trial (35 persons, 17 cases)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
1	Duško Tadić	Police officer & SDS official	26 April 1995	7 May 1997
2	Zejnil Delalić	Commander, Special Tactical Group	9 May 1996	16 November 1998 (acquitted)
	Zdravko Mucić	Commander, Čelebici Camp	11 April 1996	16 November 1998
	Hazim Delić	Deputy Commander, Čelebici Camp	18 June 1996	
	Esad Landžo	Camp Guard	18 June 1996	
3	Anto Furundžija	Commander Military Police, HVO	19 December 1997	10 December 1998
4	Zlatko Aleksovski	Prison Commander	29 April 1997	25 June 1999
5	Goran Jelišić*	Luka Camp Staff	26 January 1998	14 December 1999 (acquitted of genocide but pleaded guilty on other counts; see below)
6	Dragan Papić	Member HVO	8 October 1997	14 January 2000 (acquitted)
	Zoran Kupreškić	HVO Soldier	8 October 1997	14 January 2000
	Mirjan Kupreškić	HVO Soldier	8 October 1997	
	Vlatko Kupreškić	HVO Soldier	16 January 1998	
	Drago Josipović	HVO Soldier	8 October 1997	
	Vladimir Šantić	Military Police Commander	8 October 1997	
7	Tihomir Blaškić	HVO Colonel	3 April 1996	3 March 2000
8	Dragoljub Kunarac	Commander VRS	9 March 1998	22 February 2001
	Radomir Kovač	Sub-Commander, Military Police	4 August 1999	
	Zoran Vuković	Sub-Commander, Military Police	29 December 1999	
9	Dario Kordić	President HDZ-BiH	8 October 1997	26 February 2001
	Mario Čerkez	HVO Commander		
10	Radislav Krstić	Deputy Commander VRS Drina Corps	7 December 1998	2 August 2001
11	Miroslav Kvočka	Commander Omarska Camp	14 April 1998	2 November 2001
	Milojica Kos	Shift Commander	2 June 1998	
	Dragoljub Prcać	Deputy Commander, Omarska	10 March 2000	
	Mladjo Radić	Shift Commander	14 April 1998	
	Zoran Žigić	Detention Camp staff	20 April 1998	
12	Milorad Krnojelac	Commander KP Dom Camp	18 June 1998	15 March 2002
13	Mitar Vasiljević	Para-military	28 January 2000	29 November 2002
14	Mladen Naletilić	KB Commander (para-military)	24 March 2000	31 March 2003
	Vinko Martinović	ATG Commander	12 August 1999	
15	Milomir Stakić	President Municipal Assembly, Prijedor	28 March 2001	31 July 2003
16	Blagoje Simić	President, SDS Bosanski Šamac	15 March 2001	17 October 2003
	Miroslav Tadić	Chairman, Bosanski Šamac "Exchange Commission"	17 February 1998	
	Simo Zarić	Commander	26 February 1998	
17	Stanislav Galić	Commander Sarajevo Romanija Corps	29 December 1999	5 December 2003
	Total Persons: 35			

*Goran Jelišić appears in both sections of this annex because he pled guilty on some counts and was tried on another.
All figures as of 5 May 2004.

2. Persons Pleading Guilty (17 persons)				
Case**	Name	Former Title	Initial Appearance	Judgement
1	Dražen Erdemović	Soldier	31 May 1996	29 November 1996
2	Goran Jelišić*	Luka Camp Staff	26 January 1998	14 December 1999 (tried and acquitted on another charge)
3	Stevan Todorović	Chief of Police, Bosanski Šamac	30 September 1998	31 July 2001
4	Duško Sikirica	Commander, Keraterm Camp	7 July 2000	13 November 2001 (guilty pleas entered after 6 months of trial)
	Damir Došen	Shift Commander	1 November 1999	
	Dragan Kolundžija	Shift Commander	14 June 1999	
5	Milan Simić	President, Executive Board, Bosanski Šamac	17 February 1998	17 October 2002
6	Biljana Plavšić	Acting President 'Serbian Republic' of BiH	11 January 2001	27 February 2003
7	Predrag Banović	Guard, Keraterm Camp	16 November 2001	28 October 2003
8	Momir Nikolić	Captain VRS	3 April 2002	2 December 2003
9	Dragan Obrenović	Deputy Commander 1st Zvornik Infantry Brigade	18 April 2001	10 December 2003
10	Dragan Nikolić	Commander, Sušica Detention Camp	28 April 2000	18 December 2003
11	Ranko Češić	Luka Camp Staff	20 June 2002	11 March 2004
12	Miodrag Jokić	Vice Admiral, Commander of the Ninth VPS	14 November 2001	18 March 2004
13	Miroslav Deronjić	President, Bratunac Crisis Staff	10 July 2002	30 March 2004
14	Darko Mrđa	Special Police Officer	17 June 2002	31 March 2004
15	Milan Babić	President SAO, Krajina	26 November 2003	(plea entered 27 January 2004; judgement pending)
	Total Persons: 17			

All figures as of 5 May 2004.

*Goran Jelišić appears in both sections of this annex because he pled guilty on some counts and was tried on another.

**For the purposes of this section of the table, Case refers to Sentencing Proceeding. Upon entry of a guilty plea in a multi-defendant case, the accused is severed from the case for the purposes of sentencing.

Annex 2

Trials in Progress (8 accused, 6 cases)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Comments**
1	Slobodan Milošević	President of FRY	3 July 2001	"Kosovo, Croatia & Bosnia" Judgement expected 2006
2	Radoslav Brđanin	Member of Serbian Democratic Party of BiH	12 July 1999	"Krajina" Judgement expected September 2004
3	Vidoje Blagojević	Brigade Commander	16 August 2001	"Srebrenica" Judgement expected December 2004
	Dragan Jokić	Chief Engineer	21 August 2001	
4	Enver Hadžihasanović	ABiH Brig. Commander	9 August 2001	"Central Bosnia" Judgment expected June 2005
	Amir Kubura	ABiH Commander	9 August 2001	
5	Pavle Strugar	Commander of Second Operational Group, JNA	25 October 2001	"Dubrovnik" Judgement expected October 2004
6	Momčilo Krajišnik	President of Assembly of Serbian People in BiH	7 April 2000	"Bosnia & Herzegovina" Judgement expected March 2006
	Total Persons: 8			

All figures as of 5 May 2004.
Cases are listed in the order that trials were commenced.

Annex 3

Accused Awaiting Trial (33 accused, 17 cases)			
Case	**Name**	**Former Title**	**Initial Appearance**
1	Rahim Ademi*	Major-General	26 July 2001
2	Sefer Halilović*	ABiH Military Commander	27 September 2001
3	Pasko Ljubičić	Commander 4th Military Police Batallion HVO	30 September 2001
4	Dušan Fuštar	Shift Commander, Omarska	6 February 2002
	Momčilo Gruban*	Shift Commander, Omarska	10 May 2002
	Dušan Knežević	Detention Camp staff	24 May 2002
	Željko Mejakić	Commander, Omarska Detention Camp	7 July 2003
5	Dragoljub Ojdanić	Chief of Staff, Yugoslav Army	26 April 2002
	Nikola Šainović	Deputy Prime Minister FRY	3 May 2002
	Milan Milutinović	President Serbia	27 January 2003
6	Mile Mrkšić	Colonel and Commanding Officer, JNA	16 May 2002
	Mile Radić	JNA Captain	21 May 2003
	Veselin Šljivančanin	JNA Major	16 February 2004
7	Milan Martić	'President' of Republic of Serbian Krajina (RSK)	21 May 2002
8	Radovan Stanković	Para Military, Foča	21 July 2002
9	Haradin Bala	KLA Member	20 February 2003
	Isak Musliu	KLA Member	20 February 2003
	Fatmir Limaj	KLA Commander	5 March 2003
10	Vojislav Šešelj	President, SRS	26 February 2003
11	Naser Orić	Commander ABiH	15 April 2003
12	Franko Simatović	Commander, DB Special Operations	2 June 2003
	Jovica Stanišić	Head, State Security Service, Republic of Serbia (DB)	12 June 2003
13	Ivica Rajić	Commander Croatian Defence Council HVO	27 June 2003
14	Mitar Rašević	Commander of KP Dom Prison Guards	18 August 2003
15	Vladimir Kovačević	JNA Commander	3 November 2003
16	Ivan Čermak	Assistant Minister Defence, Croatia	12 March 2004
	Mladen Markač	Special Police Commander	
17	Jadranko Prlić	President HVO	6 April 2004
	Bruno Stojić	HVO Official	
	Slobodan Praljak	Assistant Minister Defence, HVO	
	Milivoj Petković	HVO Commander	
	Valentin Ćorić	Chief of the Military Police Administration, HVO	
	Berislav Pušić	Military Police Commanding Officer, HVO	
	Total Persons: 33		

All figures as of 5 May 2004.
*On provisional release.

Annex 4

APPEALS COMPLETED IN 1995 (with date of Decision)			
INTERLOCUTORY		FROM JUDGEMENT	
1. Tadić - IT-94-1-AR72	02/10/95		

Total number of Appeals completed in 1995 = 1
Interlocutory Appeals = 1
Appeals from Judgement = 0

APPEALS COMPLETED IN 1996 (with date of Decision)			
INTERLOCUTORY		FROM JUDGEMENT	
1. Blaškić – IT-95-14-AR72	14/10/96		
2. Delalić et al – IT96-21-AR72.1	14/10/96		
3. Delalić et al - IT-96-21-AR72.2	15/10/96		
4. Delalić et al - IT-96-21-AR72.3	16/10/96		
5. Delalić et al - IT-96-21-AR72.4	22/11/96		
6. Delalić et al - IT-96-21-AR72.5	06/12/96		

Total number of Appeals completed in 1996 = 6
Interlocutory Appeals = 6
Appeals from Judgement = 0

APPEALS COMPLETED IN 1997 (with date of Decision)			
INTERLOCUTORY		FROM JUDGEMENT	
1. Opačić – IT-95-7-Misc. 1	03/06/97	ICTY	07/10/97
2. Dokmanović – IT-95-13a-AR72	11/11/97	1. Erdemović IT-96-22-A	
3. Delalić et al -- IT-96-21-AR73	16/12/97		
ICTR		REVIEW R108*bis*	
1. Kanyabashi ICTR-96-15 (jurisdiction)	06/08/97	1. Blaškić (Croatia) IT-95-14-AR108 *bis*	29/10/97

Total number of Appeals completed in 1997 = 6
Interlocutory Appeals = 4
Appeals from Judgement = 1
Review = 1

APPEALS COMPLETED IN 1998
(with date of Decision)

ICTY INTERLOCUTORY		FROM JUDGEMENT	
1. Delalić et al – IT-96-21-AR73.3	03/03/98		
2. Delalić et al – IT-96-21-AR73.2	04/03/98		
3. Kovačević – IT-97-24-AR73	22/04/98	**REVIEW R108*bis***	
4. Delalić et al – IT-96-21-AR73.4	15/06/98		
5. Delalić et al – IT-96-21-AR73.5	discontinued	1. Blaskić (Croatia) – IT-95-14-AR108bis	26/02/98
6. Kovačević – IT-97-24-AR73.2	14/07/98	**ICTR INTERLOCUTORY**	
7. Furundžija – IT-95-17/1-AR73	24/08/98		
8. Kos et al – IT-95-4 & 8-AR73	withdrawn	1. Bagosora – ICTR-98-37-A	08/06/98
9. Delalić et al – IT-96-21-AR73.6 & 7	29/08/98	2. Ntahobali – ICTR-97-21-A	08/06/98
10. Kovačević – IT-97-24-AR73.3	24/09/98	3. Rutaganda – ICTR-96-3-A	08/06/98
11. Kupreškić –IT-95-16-AR73	22/10/98	4. Ntabakuze – ICTR-97-34-A	06/10/98
12. Aleksovski – IT-95-14/1-AR73	18/12/98	5. Nyiramasuhuko/Ntahobali – ICTR-97-21-A	28/10/98
		6. Kabiligi – ICTR-97-34-A	18/12/98

Total number of Appeals completed in 1998 = 19

Interlocutory Appeals = 18 Contempt = 0
Appeals from Judgement = 0 Review = 1

APPEALS COMPLETED IN 1999
(with date of Decision)

ICTY INTERLOCUTORY		FROM JUDGEMENT	
1. Kupreškić – IT-95-16-AR73.2	04/02/99	1. Tadić – IT-94-1-A	15/07/99
2. Kupreškić – IT-95-16-AR73.3	12/03/99	(46 decisions during Appeal)	
3. Kordić – IT-95-14/2-AR73	17/03/99		
4. Kupreškić – IT-95-16-AR73.4	04/05/99	**REVIEW R108*bis***	
5. Simić – IT-95-9-AR72	18/05/99		
6. Simić – IT-95-9-AR73	08/06/99	1. Kordić (Croatia) – IT95-14/2-AR108bis	09/09/99
7. Simić (Todorovic) – IT-95-9-AR73.2	01/07/99	2. Blaškić (Croatia) – IT-95-14-AR108bis	16/11/99
8. Kordić – IT-95-14/2-AR73.3	12/07/99	**ICTR INTERLOCUTORY**	
9. Kordić – IT-95-14/2-AR73.2	18/08/99		
10. Kupreškić – IT-95-16-AR65.2	18/08/99	1. Kanyabashi – ICTR-96-15-A	13/04/00
11. Kupreškić – IT-95-16-AR65.1	18/08/99	2. Nyiramasuhuko – ICTR-97-21-A	13/04/00
12. Kordić – IT-95-14/2-AR73.4	23/08/99	3. Kanyabashi – ICTR-96-15-A	03/06/99
13. Kupreškić – IT-95-16-AR65.3	29/09/99	4. Nsengiyumva – ICTR-96-12-A	03/06/99
14. Brđanin – IT-99-36-AR72	16/11/99	5. Ntuyahaga – ICTR- 96-12-A	03/06/99
15. Kunarac – IT-96-23-AR65	25/11/99	6. Kabiligi – ICTR-97-34-A	28/07/99
16. Kupreškić – IT-95-16-AR65.4	01/12/99	7. Ndayambaje – ICTR-96-8-A	02/11/99
17. Brđanin – IT-99-36-AR73	23/12/99	8. Nteziryayo – ICTR-97-29-A	02/11/99
		9. Semanza – ICTR-97-20-A	02/11/99
		10. Barayagwiza – ICTR-97-19-AR72	03/11/99
		11. Bicamumpaka – ICTR-99-50-I	11/11/99

Total number of Appeals completed in 1999 = 31

Interlocutory Appeals = 28 Contempt = 0
Appeals from Judgement = 1 Review = 2

APPEALS COMPLETED IN 2000
(with date of Decision)

ICTY INTERLOCUTORY

1. Talić - IT-99-36-AR72.2	01/03/00
2. Simić - IT-95-9-AR65	19/04/00
3. Simić - IT-95-9-AR73.3	03/05/00
4. Talić - IT-99-36-AR73.2	16/05/00
5. Kordić - IT-95-14/2-AR73.5	21/07/00
(leave granted 28/03/00)	
6. Brdanin - IT-99-36-AR65	07/09/00
7. Krajišnik - IT-00-39-AR72	13/09/00
8. Kordić - IT-95-14/2-AR73.6	18/09/00
(leave granted 28/04/00)	
9. Kordić - IT-95-14/2-AR73.7	22/09/00
10. Kvočka -IT-98/30/1-AR73	10/10/00
11. Kvočka -IT-98/30/1-AR73.2	27/10/00
12. Kvočka -IT-98/30/1-AR73.3	22/11/00
13. Simić - IT-95-9-AR72.2	04/12/00
14. Kordić - IT-95-14/2-AR73.8	05/12/00
15. Simić - IT-95-9-AR73.4	05/12/00
16. Kolundžija-IT-95-8-AR73.2	12/12/00

FROM JUDGEMENT

ICTY	
1. Tadić Sentencing – IT-94-1-A & A*bis*	26/01/00
2. Aleksovski - IT-95-14/1-A	24/03/00
3. Furundžija - IT –95-17/1-A	21/07/00
ICTR	
1. Kambanda – ICTR-97-23-A	19/10/00
2. Serushago – ICTR-98-39-A	06/04/00

CONTEMPT

1. Tadić (first instance) – IT-94-1-A-R77	31/01/00

REVIEW 108*bis*

ICTR	31/03/00
1. Barayagwiza – ICTR-97-19-AR72	16/06/00
2. Nyiramasuhuko – ICTR-97-21-AR72	12/09/00
3. Kanyabashi – ICTR-96-15-AR72	14/09/00
4. Barayagwiza – ICTR-97-19-AR72	

ICTR INTERLOCUTORY

1. Kabiligi – ICTR-97-34-A	21/01/00
2. Kanyabashi – ICTR-96-15-A	21/01/00
3. Ntabakuze – ICTR-97-34-A	21/01/00
4. Bagambiki – ICTR-96-10-A & ICTR-97-36-A	13/04/00
5. Imanishimwe – ICTR-96-10-A & ICTR-97-36-A	13/04/00
6. Kanyabashi – ICTR-96-15-A	13/04/00
7. Ntagerura – ICTR-96-10-A & ICTR-97-36-A	13/04/00
8. Ntahobali – ICTR-97-21-A	13/04/00
9. Nsengiyumva – ICTR-96-12-A	28/04/00
10. Kajelijeli – ICTR-98-44-A	28/04/00
11. Karemera – ICTR-98-44-AR72	28/04/00
12. Ngirumpatse – ICTR-98-44-A	29/04/00
13. Kabiligi – ICTR-97-34-A	18/05/00
14. Semanza – ICTR-97-20-A	31/05/00
15. Kabiligi – ICTR-97-34-A	02/08/00
16. Ngeze/Nahimana – ICTR-97-27-AR72 & ICTR-96-11-AR72	05/09/00
17. Barayagwiza – ICTR-97-19-AR72*	12/09/00
18. Niyitegeka – ICTR-96-14-A	16/10/00
19. Kabiligi – ICTR-97-34-A	13/11/00
20. Nsengiyumva – ICTR-96-12-AR72	13/11/00
21. Ntabakuze – ICTR-97-34-A	14/11/00
22. Semanza – ICTR-97-20-A	04/12/00
23. Barayagwiza – ICTR-97-19-AR72	13/12/00

Total number of Appeals completed in 2000 = 49

Interlocutory Appeals = 39
Appeals from Judgement = 5
Contempt = 1
Review 108*bis* = 4

APPEALS COMPLETED IN 2001
(with date of Filing and Decision)

INTERLOCUTORY

ICTY	
1. Naletilić/Martinović – IT-98-34-AR73	17/11/00 -31/01/01
2. Naletilić/Martinović –IT-98-34-AR73.2	06/12/00-02/02/01
3. Kvočka – IT-98-30/1-AR73.4	07/11/00-08/02/01
4. Brđanin/Talić – IT-99-36-AR73.3	20/09/00-20/03/01
5. Brđanin/Talić – IT-99-36-AR73.4	03/11/00-22/03/01
6. Brđanin/Talić – IT-99-36-AR73.5	13/11/00-22/03/01
7 Brđanin/Talić – IT-99-36-AR73.6	20/11/00-22/03/01
8. Kolundžija – IT-95-8-73.3	29/09/00-09/05/01
9. Motion to reconsider Naletelic- (IT-98-34-AR73.2)	08/02/01-11/05/01
10. Krajišnik - IT-00-39-AR72.2	08/08/00-25/05/01
11. Kvočka- IT-98-30/1-AR73.5 (leave granted 16/2/01)	12/12/00-25/05/01
12. Kupreškić – IT-16-A-AR73	30/05/01-18/06/01
13. Kupreškić – IT-16-A-AR73.2	30/05/01-18/06/01
14. Kupreškić - T-16-A-AR73.3	30/05/01-18/06/01
15. Misc-IT-99-38-Misc13-AR73	29/12/00-27/06/01
16. Krajišnik/Plavsić- IT-00-39&40-AR72	04/05/01-27/06/01
17. Brđanin/Talić – IT-99-36-AR72.3	05/07/01-31/07/01
18. Kvočka – IT-98-30/1-AR73.6	05/06/01-31/07/01
19. Krajišnik/Plavsić-IT-00-39&40-AR73	23/07/01-25/10/01
20. Naletilić/Martinović –IT-98-34-AR73.3	18/09/01-12/11/01
21. Naletilić/Martinović –IT-98-34-AR73.4	10/09/01-12/11/01
22. Galić – IT-98-29-AR72	25/10/01-30-11/01
23. Galić – IT-98-29-AR73	26/11/01-14/12/01
24. Krajišnik/Plavsić-IT-00-39&40-AR65	11/10/01-14/12/01
ICTR	
1. Nzirorera – ICTR-98-44-A	23/02/01
2. Nzirorera – ICTR-98-44-A	04/05/01
3. Rwamakuba – ICTR-98-44-A	11/06/01
4. Kanyabashi – ICTR-96-15-A	13/06/01
5. Kajelijeli – ICTR-98-44A-A	18/09/01
6. Kajelijeli – ICTR-98-44A-A	16/11/01
7. Kajelijeli – ICTR-98-44A-A	14/12/01

FROM JUDGEMENT

ICTY	
1. Delalić et al – IT-96-21-A	20/02/01
2. Jelisić – IT-95-10-A	05/07/01
3. Kupreškić et al. – IT-95-16-A	23/10/01
ICTR	
1. Akayesu – ICTR-96-4-A	01/06/01
2. Kayishema/Ruzindana – ICTR-95-1-A	12/07/01
3. Musema – ICTR-96-13-A	16/11/01

CONTEMPT

1. Tadić (Vujin) - IT-94-1-A-AR77	27/02/01
2. Aleksovski – IT-95-14/1-AR77	30/05/01

Review 108*bis*

ICTY	
1. Simic – IT-95-9-AR108*bis* (NATO, Denmark, Canada, France, Germany, Italy, Netherlands, Norway, United Kingdom, United States (general importance 8/11/00)	27/03/01
ICTR	
1. Semanza – ICTR-97-20-A	04/05/01
2. Akayesu – ICTR-96-4-A	16/05/01

Total number of Appeals completed in 2001 = 42

Interlocutory Appeals = 31
Appeals from Judgement = 6
Contempt = 2
Review 108*bis* = 3

APPEALS COMPLETED IN 2002
(with date of Filing and Decision)

ICTY INTERLOCUTORY

ICTY	
1. Naletilić/Martinović –IT-98-34-AR73.5	08/11/01–18/01/02
2. Brđanin/Talić – IT-99-36-AR72.4	29/11/01-18/01/02
3. Krajišnik/Plavsic – IT-00-39&40-AR73.3 (leave granted 18/10/01)	17/08/01-15/02/02
4. Stakić – IT-97-24-AR72	06/11/02-19/02/02
5. Krajišnik/Plavsic – IT-00-39&40-AR73.2 (leave granted 10/08/01)	07/08/01-26/02/02
6. Simić – IT-95-9-73.5	08/01/02-27/03/02
7. Ljubičić – IT-00-41-AR72	21/03/02-02/04/02
8. Milošević – IT-99-37-AR73, IT-01-50&51-AR73 (leave granted 9/1/02)	20/12/01-18/04/02
9. Hadzihasanović – IT-01-47-AR73 (leave granted 01/02/02)	02/10/01-23/04/02
10. Krajišnik/Plavsic – IT-00-39&40-AR73.4	11/03/02-06/05/02
11. Milošević – IT-02-54-AR73	16/04/02-17/05/02
12. Obrenović – IT-02-53-AR65 (leave granted 18/04/02)	05/04/02-28/05/02
13. Brđanin/Talić – IT-99-36-AR73.7	16/04/02-06/06/02
14. Naletilić/Martinović –IT-98-34-AR73.6	09/04/02-06/06/02
15. Galić – IT-98-29-AR73.2	02/05/02-07/06/02
16. Brđanin/Talić – IT-99-36-AR73.8	10/05/02-20/06/02
17. Stakić – IT-97-24-AR73.4	08/05/02-27/06/02
18. Šainović/Ojdanić – IT-37-AR65.1	27/06/02-30/10/02
19. Hadžihasanović – IT-02-47-AR65	02/08/02-05/09/02
20. Hadžihasanović – IT-02-47-AR65.2	02/08/02-05/09/02
21. Ljubičić – IT-00-41-AR65	08/08/02-16/09/02
22. Milošević – IT-02-54-AR73.2	27/06/02-29/09/02
23. Blagojević – IT-02-65-AR65	25/07/02-03/10/02
24. Obrenović – IT-02-65-AR65.2	31/07/02-03/10/02
25. Mrksić – IT-95-13/1-AR65 (leave granted 26/08/02)	30/07/02-08/10/02
26. Stakić – IT-97-24-AR73.5	08/08/02-10/10/02
27. Milošević – IT-02-54-AR108bis	09/08/02-23/10/02
28. Milošević – IT-02-54-AR73.3	04/09/02-23/10/02
29. Gruban – IT-02-65-AR65	27/09/02-06/11/02
30. Martić – IT-95-11-AR65	18/10/02-18/11/02
31. Strugar – IT-01-42-AR72 (leave granted 24/07/02)	21/06/02-22/11/02
32. Bobetko – IT-02-62-AR54bis	30/09/02-29/11/02
33. Bobetko – IT-02-62-AR108bis	04/10/02-29/11/02
34. Brđanin/Talić – IT-99-36-AR73.9	24/06/02-11/12/02
35. Šainović/Ojdanić – IT-37-AR65	11/11/02-12/12/02

FROM JUDGEMENT

ICTY	
1. Kunarac – IT-96-23-A	06/03/01-12/06/02
ICTR	
1. Bagilishema – ICTR-95-1A-A	09/07/01-13/12/02

CONTEMPT

ICTR	
1. Nahimana – ICTR-96-11-A	11/07/01-01/02/02
ICTY	
1. Milošević – IT-02-54-A-R77	14/06/02-04/12/02

REVIEW

ICTY	
1. Celebici – IT-96-21-R-R119	15/02/02-25/04/02
2. Jelisić – IT-95-10-R	07/01/02-02/05/02
3. Kupreškić – IT-95-16-R	21/02/02-09/07/02
4. Tadić – IT-94-1-R	18/06/02-08/08/02

ICTR INTERLOCUTORY

ICTR	
1. Barayagwiza – ICTR-99-52-A	13/09/01-01/02/02
2. Nzirorera – ICTR-98-44-A	03/10/01-01/02/02
3. Semanza – ICTR-97-20-A	12/02/02-16/04/02
4. Bagosora – ICTR-98-41-A	02/04/02-02/05/02
5. Semanza – ICTR-97-20-A	08/05/02-04/06/02
6. Nahimana – ICTR-99-52-A	12/09/02-15/10/02
7. Kabuga Family – 01-A	15/03/02-22/11/02
8. Mpambara – ICTR-2001-65	31/10/02-25/11/02
9. Bizimungu – ICTR-99-50-A	14/11/02-13/12/02

Total number of Appeals completed in 2002 = 52

Interlocutory Appeals = 44 Contempt = 2

Appeals from Judgement = 2 Review = 4

APPEALS COMPLETED IN 2003
(with date of Filing and Decision)

ICTY INTERLOCUTORY

ICTY		
1.	Nikolić – IT-94-2-AR72	07/11/02-09/01/03
2	Obrenović – IT-02-60-AR65.3	26/11/02-16/01/03
3	Blagojević – IT-02-60-AR65.4 (leave granted 16/01/03)	26/11/02-17/02/03
4	Galić – IT-98-29-AR54	06/03/03-13/03/03
5	Blagojević – IT-02-60-AR73	14/02/03-08/04/03
6	Blagojević- IT-02-60-AR73.2	17/0/203-08/04/03
7	Blagojević – IT-02-60-AR73.3	18/02/03-08/04/03
8	Šešelj – IT-03-67-AR73	09/04/03-22/04/03
9	Milutinović – IT-99-37-AR72 (leave granted 25/03/03)	28/02/03-21/05/03
10	Simić – IT-95-9-AR73.6	05/05/03-26/05/03
11	Simić – IT-95-9-AR73.7	09/05/03-26/05/03
12	Nikolic-IT-94-2-AR73	27/01/03-05/06/03
13	Milutinović – IT-99-37-AR65.2 (Ojdanic)	05/06/03-26/06/03
14	Milutinović – IT-99-37-AR65.2 (Sainovic)	05/06/03-26/06/03
15	Šešelj – IT-03-67-PT correspondence1	26/05/03-27/06/03
16	Milutinović – IT-99-37-AR65.3	10/06/03-03/07/03
17	Hadzihasanović – IT-01-47-AR72 (leave granted 21/02/03)	27/11/02-16/07/03
18	Mrkšić – IT-95-13/1-AR73	04/06/03-30/07/03
19	Nikolić – IT-94-2-AR73	20/06/03-06/08/03
20	Šešelj – IT-03-67-PT correspondence2	27/08/03-11/09/03
21	Milosević – IT-02-54-AR73.4	13/05/03-30/09/03
22	Orić – IT-03-68-AR65 (confidential)	30/07/03-17/10/03
23	Milosević – IT-02-54-AR73.5	01/10/03-28/10/03
24	Limaj – IT-03-66-AR65	22/09/03-31/10/03
25	Limaj – IT-03-66-AR65.2	23/09/03-31/10/03
26	Limaj – IT-03-66-AR65.3	23/09/03-31/10/03
27	Blagojević – IT-02-60-AR73.4 (confidential)	01/08/03-07/11/03
28	Milutinović – IT-99-37-AR73.2	13/05/03-13/11/03

FROM JUDGEMENT

ICTY	
1. Celebici – IT-96-21-A*bis*	10/10/01-08/04/03
2. Krnojelac – IT-97-25-A	12/04/02-17/09/03
ICTR	05/01/00-26/05/03
1. Rutaganda – ICTR-96-3-A	

CONTEMPT

ICTR	
ICTY	
1. Milošević – IT-02-54-A-R77.2	03/12/02-25/02/03

REVIEW

ICTY	
1.Kupreškić – IT-95-16-R.2	30/07/02-27/06/03

ICTR INTERLOCUTORY

ICTR	
1. Ndayambaje – ICTR-96-8-A	29/10/02-10/01/03
2. Sagahutu – ICTR-00-56-A	23/12/02-26/03/03
3. Nahimana – ICTR-96-11/52-A	06/03/03-28/03/03
4. Rukundo - ICTR-2001-70-I	19/03/03-28/04/03
5. Nyiramasuhuko ICTR-97-21-AR15bis	21/07/03-24/09/03 21/07/03-24/09/03
6. Nthahobali – ICTR-97-21-AR15bis	22/07/03-24/09/03
7. Kanyabashi – ICTR-96-15-AR15bis	22/07/03-24/09/03
8. Ndayambaje – ICTR-96-8-AR15bis	22/07/03-24/09/03
9. Nteziryayo – ICTR-97-29-AR15bis	19/03/03-17/10/03
10. Rukundo – ICTR-2001-70-AR72	17/09/03-23/10/03
11. Rukundo – ICTR-2001-70-AR108	29/09/03-27/10/03
12. Ntabakuze – ICTR-98-41-AR72/73 (confidential)	11/11/03-18/12/03 29/10/03-19/12/03
13. Rukundo – ICTR-2001-70-AR65(d)	09/10/03-19/12/03
14. Karemera – ICTR-98-44-AR73	10/11/03-19/12/03
15. Military Case ICTR-98-41-AR93	
16. Military Case, ICTR-98-41-AR93	

Total number of Appeals completed in 2003 = 49

Interlocutory Appeals = 44 Contempt = 1

Appeals from Judgement = 3 Review = 1

APPEALS COMPLETED AS OF 5 MAY 2004
(with date of Filing and Decision)

ICTY INTERLOCUTORY

ICTY	
1. Milosević – IT-02-54-AR73.6	22/09/03-20/01/04
2. Šešelj – IT-03-67-AR73.2	12/01/04-03/02/04
3. Brđanin – IT-99-36-AR73.10	10/12/03-19/03/04
4. Orić – IT-03-68-AR73	01/03/04-24/03/04
5. Hadžihasanović – IT-47-AR73.2	29/12/03-02/04/04

FROM JUDGEMENT

ICTY	
1. Vasiljević – IT-98-32-A	30/12/02-25/02/04
2. Krstić – IT-98-33-A	15/08/01-19/04/04

CONTEMPT

REVIEW

ICTY	
1. Kupreškić – IT-95-16-R3	11/09/03-02/04/04

ICTR INTERLOCUTORY

ICTR	
1. Bizimungu – ICTR-99-50-AR50	03/11/03-12/02/04
2. Simba – ICTR-01-76-AR72	03/02/04-13/02/04
3. Mugiraneza – ICTR-99-50-AR37	05/11/03-27/02/04
4. Rukundo – ICTR-2001-70-AR65(d) (leave granted 18/12/03)	30/12/03-08/03/04
5. Simba – ICTR-01-76-AR72	25/02/04-24/03/04
6. Ngirumpatse – ICTR-98-44-AR73.2	15/03/04-08/04/04
7. Rukundo – ICTR-2001-70-R65(D)	24/03/04-28/04/04

Total number of Appeals completed as of 5 May 2004 = 15

Interlocutory Appeals = 12 Contempt = 0
Appeals from Judgement = 2 Review = 1

Annex 5

APPEALS PENDING ON 5 MAY 2004
(with filing date)

INTERLOCUTORY		FROM JUDGEMENT	
ICTY		ICTY	
1. Milutinović – IT-99-37-AR72.2 (leave granted 27/02/04)	13/05/03	1. Blaškić - IT-95-14-A	17/03/00
2. Halilović – IT-01-48-AR73	13/04/04	2. Kordić – IT-95-14/2-A	12/03/01
		3. Kvočka – IT-98-30-A	13/11/01
		4. Martinovic/Naletelic IT-98-34-A	07/04/03
		5. Stakić – IT-97-24-A	11/08/03
		6. Simić – IT-95-9-A	17/11/03
		7. Galić – IT-98-29-A	15/12/03
ICTR		8. Momir Nikolić – IT-02-60/1-A	30/12/03
1. Nzirorera – ICTR-98-44-AR73(f)	03/02/04	9. Dragan Nikolić – IT-94-2-A	16/01/04
2. Bizimungu – ICTR-99-50-AR50	01/03/04	10. Jokić – IT-01-42/1-A	23/03/04
3. Mugiraneza – ICTR-99-50-AR73.3	26/03/04	11. Deronjić – IT-02-61-A	14/04/04
4. Ngirumpatse – ICTR-98-44-AR73.3	26/03/04		
5. Ntahobali – ICTR-98-42-AR73	25/03/04	ICTR	
6. Nyiramasuhuko – ICTR-98-42-AR73	25/03/04	1. Ntakirutimana – ICTR-96-10/17-A	21/03/03
7. Bizimungu – ICTR-99-50-AR73.4	31/03/04	2. Niyitegeka – ICTR-96-14-A	21/05/03
8. Nzirorera – ICTR-98-44-AR72	13/04/04	3. Semanza – ICTR-97-20-A	16/06/03
9. Nzirorera – ICTR-98-44-AR73.4	13/04/04	4. Kajelijeli – ICTR-98-44A-A	08/12/03
10. Karemera – ICTR-98-44-AR73.4	14/04/04	5. Media – ICTR-99-52-A	12/12/03
11. Karemera – ICTR-98-44-AR73.4	15/04/04	6. Kamuhanda – ICTR-99-54-A	03/02/04
		7. Cyangugu – ICTR-99-46-A	04/03/04
		CONTEMPT	
		REVIEW	

Total number of Appeals pending on 5 May 2004 = 31

Interlocutory Appeals = 13 Contempt = 0
Appeals from Judgement = 18 Review = 0

Enclosure II

Assessment of Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Security Council resolution 1534 (2004)

[Original: English]

INTRODUCTION

1. As a follow-up to my address to the Security Council of 9 October 2003 and as requested by the Security Council in its Resolution 1534 of 26 March 2004, I wish to provide here an assessment of the progress made towards implementation of the completion strategy, to outline the measures taken so far and to indicate what steps remain to be taken.

2. Since October 2003, my office has continued to implement the completion strategy defined by the Tribunal in 2002 and approved by the Council in resolution 1503 of 28 August 2003. I am pleased to report that the first major milestone, namely the completion of the investigation of the remaining unindicted, high-level targets will be reached as planned by the end of this year.

3. I also remain committed to meeting the second key objective, namely the completion of trials by the end of 2008. Current projections of trial workload demonstrate that radical steps will be required to comply with that deadline. Active planning is underway. The measures available to me as Prosecutor are outlined below, and the Council will be kept informed of their implementation in the context of future assessments to be provided in accordance with paragraph 6 of Resolution 1534.

PROGRESS MADE TOWARDS IMPLEMENTATION OF THE COMPLETION STRATEGY

4. In January this year, I reviewed the state of the evidence in all of our remaining investigations. All involve targets whom fall within the definition of senior leaders or commanders suspected of being most responsible for crimes within the Tribunal's jurisdiction. This step followed an earlier review at the end of 2002 when I took the decision to reduce considerably the number of investigations that would have lead to new indictments. In 2002, I divided the investigations into two categories: those that would most likely result in indictments against high level suspects (my priority A list) and those involving lower-level accused, that would be suspended, not indicted before the Tribunal, and eventually referred to domestic local prosecutors in the former Yugoslavia (my priority B list).

5. As a result of the most recent review undertaken in January 2004, one case was moved from the A list to the B list. In due course it will be transferred to the relevant domestic jurisdiction in the former Yugoslavia.

New indictments

6. Since I last reported to the Council in October 2003, I have issued five indictments, involving eleven suspects. Furthermore, one indictment involving four suspects, which was sealed at that time, has been made public since then.

7. The first of the indictments involves four senior Serbian generals who have been indicted for crimes against humanity and violations of the laws and customs of war aliegedly committed in Kosovo during 1998 and 1999. If these accused are arrested or surrender in good time, they could be joined with a related case for which a start date has not yet been fixed, resulting in a single trial involving seven accused.

8. The second indictment relates to the former President of the self-proclaimed Republic of Serbian Krajina, Milan Babi}, who has since pleaded guilty to crimes against humanity and to violations of the laws or customs of war, and is currently awaiting sentence.

9. The third indictment involves two senior Croatian generals charged with crimes against humanity and violations of the laws or customs of war against the Serb population of Croatia in 1995, during and after what was known as "Operation Storm". Both accused have been surrendered to The Hague, with the co-operation of the Republic of Croatia. There is, however, one fugitive charged with the same offences and who has not been apprehended, namely General Gotovina. Again, an early arrest would avoid separate trials being held.

10. The fourth indictment charges the remaining six most senior members of the Bosnian-Croat leadership with crimes against humanity and violations of the laws and customs of war in Bosnia and Herzegovina. All six surrendered voluntarily to the Tribunal and will be tried together.

11. The fifth indictment, unconnected to any existing trial and yet to be confirmed, also involves a senior figure. It will remain confidential and under seal pending the apprehension of the accused, who will be tried alone. I hope to be able to provide more details in the next progress report.

12. The sixth indictment, also awaiting confirmation, involves another senior military figure. I plan to join his prosecution with that of another accused already in detention in The Hague, and to apply for the case to be referred to a domestic court under Rule 11 *bis* for prosecution.

13. All of these last indictments involve most senior leaders suspected of being most responsible for crimes within the jurisdiction of this Tribunal. Recently the Judges of this Tribunal took action, which in my view was contrary to the Statute and unnecessary in light of the independence given to me under the Statute of the Tribunal, to amend Rule 28 of the Tribunal's Rules of Procedure and Evidence. By doing so, the Judges added an additional administrative requirement that the Bureau must determine whether any new indictment concentrates on the most senior leaders suspected of being most responsible for crimes within the Tribunal's jurisdiction. I note in this context that a similar amendment was not adopted by the International Criminal Tribunal for Rwanda. Four of the indictments mentioned in the previous paragraphs were confirmed prior to the amendment of Rule 28, and two were passed for confirmation subsequently, after they had been reviewed by the Bureau.

Remaining investigations

14. Not all investigations result in ICTY indictments. Two suspects on my priority A list are now deceased, and the review process has resulted in a net transfer of seven targets from the A priority list to the B list. As other investigations progress, it becomes apparent that some accused who were on my priority B list could actually rather be on the priority A list. However, I do not expect to re-evaluate additional accused from priority B to priority A.

15. As a consequence, my Office is currently conducting seven remaining investigations involving 13 suspects. Therefore, subject of course to confirmation by the Chambers, a maximum of seven new indictments could be issued before the end of the year. Of these seven final indictments, two could be joined with indictments already issued. Depending on arrests, there will therefore be a potential maximum of five additional trials from new indictments.

Consequential downsizing of the Office of the Prosecutor

16. The issuing of the last indictments by the end of 2004 will have important staffing and structural consequences for my Office. Fresh budget proposals are now being prepared which take into account that all activity from 2005 on (including a continuing investigative capacity) will be geared towards supporting the trial programme. The Tribunal's budget for the biennium 2004-2005, approved by the Fifth Committee of the General Assembly in December 2003, has frozen the whole portion of the 2005 budget for the Investigation Division of my Office. This is jeopardising the ability of the Tribunal to retain the services of the most essential and experienced staff, many of whom are now seeking employment outside the Tribunal due to the uncertainty of their contractual status. None of my staff in the Investigation Division are able to have their contracts renewed beyond 30 December 2004. This should have been a foreseeable consequence. The more that experienced staff leave this Tribunal the greater will be the negative impact on the Tribunal's ability to meet the deadlines of the completion strategy.

17. The budget proposals will be presented to the General Assembly in the coming months when the 2005 budget for the Investigations Division of my Office is considered. My Office has already started to reduce the level of our investigative resources by not renewing certain regular and temporary staff contracts. However, the trial process itself regularly produces demands for new evidence, and it will always be necessary to maintain a significant investigative capability, including investigators, analysts and research staff, to support trial and appeal work, and also to prepare the transfer of cases and investigative materials to domestic courts.

18. I should emphasise that the end of investigations does not mean the end of all investigative activities. Indeed, the term "Investigation" is defined in Rule 2 of the Tribunal's Rules of Procedure and Evidence as meaning:

> "*All activities undertaken by the Prosecutor under the Statute and the Rules for collection of information and evidence ,whether before or after an indictment is confirmed.*" (emphasis added).

19. It is therefore important to appreciate that investigators and the other staff in the Investigation Division, such as the Criminal, Political, and Military Analysts remain essential for the prosecution process, including both in the pre-trial and in the trial phases, as well as during the appeal stage. Having such resources is particularly important, and essential, during and after the presentation by the accused of the defence case during trial. But because the fieldwork will contract, I have decided to close two of my field offices in the former Yugoslavia.

Measures to improve efficiency in the preparation and presentation of cases.

20. The Office of the Prosecutor participates actively in the Rules Committee and in the Scheduling Committee set up by the Tribunal. In both committees, my office has submitted a number of proposals, some of which were accepted, to increase the efficiency of the trials. These measures include: improved procedures to address the electronic disclosure of materials to the defence, helping to streamline the pre-trial process; proposals to allow the presentation of crimebase evidence in the form of summarising dossiers.

21. My trial teams are continuing to make increased use of new rules of evidence permitting the introduction of written witness statements in lieu of oral testimony, and allowing witnesses to adopt their written statements instead of giving lengthy evidence in chief.

22. In addition, my Office has made determined use of new technology (Casemap) to record and structure evidence prepared for individual cases and to make it easily shared among trial teams, preventing duplication of effort. Trial teams have been trained in, and are using, another sophisticated programme (Sanction) to streamline the presentation of evidence in court, resulting in substantial savings of court time. These technologies have also been made available to the Defence and to the Chambers. They can also be instrumental in reducing the time needed for drafting judgements.

23. I have begun with my Senior Trial Attorneys a new series of internal reviews of the progress of individual trials. These reviews (always consistent with the need to prove the case against the accused) have already resulted in the restriction of the scope of the charges and in limiting the number of prosecution witnesses and exhibits in several trials.

24. Great savings of Court time have been achieved by guilty pleas, often obtained through the active involvement of my Office. My Senior Trial Attorneys remain open to explore with the defence the possibility of accused persons pleading guilty to all or some of the charges against them.

25. Like President Meron, I too am conscious of the difficulties of retaining and motivating staff in the Tribunal's final years. In management terms I am therefore preparing a new set of strategic aims and objectives for my office, centered on the concept of the "positive completion" of the Tribunal's mandate. Those aims will be reflected in work plans and individual performance at all levels: their purpose will be to set the direction for the remaining years; to provide clarity to staff; and to foster a dynamic atmosphere in my Office towards achieving the goals.

Transfer of cases

26. On 9 October 2003, I suggested to the Security Council that the appropriate time to start transferring cases to the domestic jurisdictions would be the beginning of 2005. I believe that that time frame can still be achieved, provided serious efforts continue to be made for the creation of effective jurisdictions in the countries of the former Yugoslavia, capable of handling war crimes cases in accordance with international standards. My office has been active throughout the region to support capacity-building and training the personnel of domestic courts.

27. In Bosnia and Herzegovina, following the successful donors' conference that took place in The Hague on 30 October 2003, my Office has participated in a number of working groups aimed at establishing a War Crimes Chamber within the State Court. My Office has been especially concerned, together with the Office of the High Representative, to preparing the ground for a smooth transfer of cases to the domestic courts of the former Yugoslavia. We have been attempting to anticipate and remove any obstacles to the use of ICTY indictments and evidence in the respective national systems. My Office has also participated in the establishment of an adequate legislative and institutional frameworks in the region, and has worked with other international and regional organisations, to ensure that the proceedings before domestic institutions can be completed in a professional way and can be internationally monitored. Further my staff are actively engaged in a positive dialogue with the senior prosecutors in all of the relevant states of the former Yugoslavia.

28. In Croatia I raised these issues with the relevant authorities in the course of my last visit in October 2003. I was pleased to see that in the new Croatian legislation enacted in late 2003, my recommendation referring to the direct admissibility of ICTY cases and evidence was taken into account. In Serbia and Montenegro, my Office has been co-operating closely with the Special Prosecutor on War Crimes. In particular, we provided numerous documents and further assistance for the preparation of the trial against those accused of killing civilians in Ovcara, in the outskirts of Vukovar, in 1991. This trial is on-going in Belgrade. My Office has also provided the relevant authorities in Serbia and Montenegro, and in Bosnia and Herzegovina, with suggestions on the admissibility of the ICTY evidence.

29. Both in Croatia and in Serbia and Montenegro, my Office is in contact with local representatives of the Organisation for Security and Co-operation in Europe (OSCE). I also visited the headquarters of this organisation, in Vienna, in November 2003 to present our views on future war crimes trials in the countries of the former Yugoslavia. I understand that the OSCE, both in the headquarters and through its missions in the region, is willing and able to play a key role in supporting domestic jurisdictions, training legal professionals and monitoring war crimes trials.

30. Cases that could be transferred are being selected. Three types of cases have been identified for future transfer to domestic courts:

I. ICTY indicted cases, pursuant to the application of Rule 11 *bis* of the ICTY Rules of Procedure and Evidence. Upon request by the President of the Tribunal, I have drawn up a list of several cases, mostly older cases concerning relatively lower-level perpetrators which, in my view, would be fit for such a deferral. Rule 11 *bis* offers the best guarantees for the ICTY

to ensure that any cases deferred under this Rule are prosecuted in accordance with international standards for the following reasons. First, the ICTY has the right to monitor such trials. Secondly, the Tribunal can use its right of primacy and recall the case if the trial does not proceed in a satisfactory or fair manner. The mere existence of such a provision should act as a strong incentive for the relevant domestic judicial authorities to handle the case in accordance with accepted international standards. I do not exclude the possibility that further cases will be identified for referral to the domestic courts once all of my investigations have been concluded.

II. Non-indicted cases, i.e. investigative materials and evidence collected by my Office during the course of investigations. These involve medium-level perpetrators, whose cases were suspended on my own initiative at the end of 2002 following a review of those cases. There are now 19 cases in this category, which involve approximately 67 suspects. These 19 cases will be referred to domestic courts for further investigation and prosecution as follows: 14 cases (involving about 50 suspects) to Bosnia and Herzegovina, 3 cases (involving about 10 suspects to Croatia), 1 case (involving about 6 suspects) to Serbia and Montenegro, and 1 case (1 or more suspects) to Macedonia.

III. The cases where my Office over the years has identified thousands of individual perpetrators in respect of whom some evidence has been gathered, suggesting that they may have been involved in the commission of crimes falling within the jurisdiction of the Tribunal. In each of these cases, it is my intention to compile brief individual dossiers of evidence and other supporting material, and to submit them to the relevant prosecutors within the former Yugoslavia. It will be for those prosecutors to decide whether any particular case should proceed. Apart from providing these dossiers of evidence, the ICTY will not play any other role in the prosecution of these cases.

FURTHER PROGRESS TO BE MADE AND MEASURES TO BE TAKEN

31. Despite all the efforts made in the past months, the timeframe for the completion of trials will be very difficult to achieve unless further drastic measures are taken. I agree with President Meron's projection that, as matters now stand, the Tribunal does not have the capacity before the end of 2008 to deal with much more than the trials of those persons already in custody or on provisional release. In order to maximise the opportunity to try fugitives and the accused on the indictments that will be issued this year, however, my Office will continue to take the various measures outlined in paragraphs 20-25 to increase the efficiency of the trials. At the beginning of 2005, by which time the overall workload and resource position should be clearer, I also intend to carry out a further review of all cases. In order to keep with the timeframe set by the Security Council, it will probably be necessary to transfer to local courts under Rule 11bis a greater number of cases, even some involving high-level accused.

Increased international efforts to build domestic courts

32. It will obviously be impossible to transfer cases in the absence of credible domestic courts that will be able to conduct fair and impartial trials in accordance with international standards.

33. I would therefore like to draw the attention of the Council to a number of issues that both the international community and the local authorities in Bosnia and Herzegovina, in Serbia and Montenegro, in Croatia and in Macedonia, should focus on as soon as possible, so as to enhance the chances that the local judiciaries will be able to try war criminals as soon as in 2005.

34. Although the most sensitive cases will be dealt with by specially designated and equipped courts, there are also lower-level cases that will have to be tried before regular courts, for instance at the District or Cantonal level. I doubt whether such courts are capable of facing this challenge, and I would encourage the international and national authorities to develop training programmes and general support for these courts, especially in terms of fairness and impartiality of the legal process.

35. Despite some progress in designing witness protection programmes, the local courts are still confronted with the lack of willingness of witnesses to testify in the region, when the same witnesses would have been ready to testify in The Hague. For instance, my Office has been instrumental in finding ways to make sure that Croatian witnesses can testify in the trial in Belgrade of those responsible for the massacres that took place outside of Vukovar, in Ovcara, in 1991. These witnesses refused to come to Serbia for that purpose, and a video-link between Zagreb and Belgrade had to be organised. There have indeed been several instances of witness intimidation, and even some murders, in Serbia, including in Kosovo, in the past year, also for witnesses due to appear at the ICTY. It seems obvious that a positive political climate would encourage victims or insiders to testify. In this area, a lot remains to be done.

36. Finally, the prosecution of cases referred to domestic courts will require intense co-operation between the countries of the former Yugoslavia. First, it is most likely that prosecutors from one country will have to have access to documents and evidence from other countries. Secondly, individuals accused in one country may reside in another country of the region or may have dual citizenship. In the absence of adequate judicial assistance and extradition agreements and mechanisms functioning between the countries of the former Yugoslavia, there is a high risk that non-indicted cases being transferred by my Office to the region will not be pursued. Such impunity must be avoided.

Surrender of Indicted Accused

37. In relation to meeting the 2008 deadline, namely the completion of all trial activity at first instance by the end of that year, a familiar problem needs to be addressed, namely the arrest or surrender of the indicted accused. The apprehension of these fugitives remains outside the control of Tribunal and depends, in the first instance, on the full co-operation of Member States having the responsibility to do so, and in the second instance relies on the co-operation of others having the ability to apprehend such fugitives, for instance SFOR in Bosnia and Herzegovina.

38. There are currently 20 fugitives awaiting apprehension on arrests warrants issued by this Tribunal, notwithstanding those who might be included in sealed indictments. In respect of those fugitives, eight have co-accused already within the Tribunal's jurisdiction, and whose trials have not yet been listed, and where it would be possible to have joint trials. Clearly this must be

a matter of grave concern and is one of the most important factors in the Tribunal being able to meet the completion strategy deadlines.

39. On the same topic, it should be noted that in respect of all the other remaining 13 fugitives, the Tribunal has either already completed trials of other indicted co-accused, or is currently hearing trials of indicted co-accused. Obviously it is now too late to remedy this situation, but it does highlight the dilemma facing the Tribunal when it issues indictments in a timely manner but when apprehensions do not follow in the same manner, thus forcing the Tribunal to hold multiple trials in respect of the same indictment.

40. Furthermore, I would strongly maintain to the Council that the mandate of the Tribunal cannot be considered as fulfilled so long as Radovan Karadzi}, Ratko Mladi} and Ante Gotovina remain at large. They must be brought to justice in the ICTY.

Co-operation of States beyond arrests.

41. The co-operation that ICTY receives from the States of the former Yugoslavia is another important factor affecting the completion strategy. Speedy trials require the prompt production of documentary evidence and unhampered access and availability of witnesses. Under Article 29 of the ICTY Statute, it is a legal obligation of all UN Member States to co-operate with the Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law. My Office needs to be able to access without undue delay the relevant documents, witnesses and other forms of evidence held by the relevant States in order to complete its investigations and prepare the trials

42. Since my last appearance before the Council, there were very positive developments with regard to Croatia's co-operation with the ICTY. The Government now responds to requests for assistance regarding documents and witnesses in a swift and professional manner. In March and April, the Croatian authorities handled the two indictments referred to above in the most efficient manner. The only remaining issue is the Gotovina case. I am disappointed that it was not possible for Croatia to ensure the transfer of this accused since he was indicted in 2001. However, since the new Government was installed in January 2004, my Office has developed close co-operation to locate this fugitive. I am convinced the Croatian Government is currently doing everything it can to locate and arrest him. I obviously expect the Croatian authorities to continue to do their utmost until Gotovina is in The Hague.

43. In Bosnia and Herzegovina, I have noticed increased activities by OHR and SFOR aimed at arresting ICTY fugitives, including by putting strong pressure on the networks supporting them. Unfortunately, they have not produced any desired results so far. The authorities in Republika Srpska still do not show any genuine willingness to co-operate with the Tribunal. There are serious doubts that the only operation supposedly aimed at arresting a fugitive, last April, was truly motivated by this objective. It is essential for the completion strategy and for the overall success of the Tribunal to keep strong pressure on the networks protecting the fugitives until all are in The Hague.

44. Serbia and Montenegro has practically suspended any cooperation with the Tribunal. Except for the waivers granted in April to three witnesses in the context of my investigation against leaders

of the Kosovo Liberation Army, no progress can be reported. Over 100 requests for documents and 50 requests for such waivers are outstanding. Furthermore, the relevant authorities of Serbia and Montenegro have proven through their behaviour in the recent months that they are not ready to execute the arrest warrants transmitted to them by the Tribunal. Serbia and Montenegro is therefore in breach of its international legal obligations, including several Security Council resolutions adopted under Chapter VII of the Charter, most recently resolutions 1503 of 28 August 2003 and 1534 of 26 March 2004. As a consequence, I requested the President to notify the Security Council in accordance with Rule 59 of the ICTY Rules of Procedure and Evidence.

CONCLUSION

45. I will continue to work closely with the President to ensure that the Tribunal as a whole is doing its utmost to meet the objectives set in resolutions 1503 and 1534. The Tribunal, however, does not operate in a vacuum and success will depend on both internal measures and external support. By meeting the 2004 deadline my Office has demonstrated its commitment to the completion strategy. In the same spirit, we are now turning our attention to completing the trial programme by 2008. Meeting that target depends crucially on timely arrests and the development in national courts of a credible alternative forum for the prosecution of war crimes cases. The international community's strong and continuous support remains needed to ensure that the ICTY fulfils its mandate and makes a positive contribution to long-lasting peace in the region.